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# federal register

Thursday
February 29, 1996

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The Code of Federal Regulations is sold by the Superintendent of Documents. Prices of new books are listed in the first FEDERAL REGISTER issue of each week.

## DEPARTMENT OF AGRICULTURE

### Grain Inspection, Packers and Stockyards Administration

### 7 CFR Part 868

### Removal of U.S. Grade Standards

**AGENCY:** Grain Inspection, Packers and Stockyards Administration.

**ACTION:** Interim final rule with request for comments.

**SUMMARY:** This rule will remove the voluntary U.S. grade standards for Beans, Whole Dry Peas, Split Peas, and Lentils from the Code of Federal Regulations (CFR). These are an accumulation of regulations which have been developed for more than 75 years to facilitate the marketing of agricultural commodities by providing a uniform language which may be used to describe the quality of various agricultural commodities as valued in the marketplace. The voluntary standards and all subsequent revisions or new standards will be made available in a separate publication. This regulatory action is being taken as part of the National Performance Review program to eliminate unnecessary regulations and improve those that remain in force.

In carrying out this responsibility, the Administrator of the Grain Inspection, Packers and Stockyards Administration (GIPSA), will ensure that proposed, new or revised voluntary standards will appear in the ''Notices'' section of the Federal Register and that the public will have an opportunity to comment.

**EFFECTIVE DATE:** February 29, 1996. Comments must be received by April 29, 1996.

**ADDRESSES:** Interested persons are invited to submit written comments concerning this interim final rule. Written comments may mailed or faxed to George Wollam, Regulatory Liaison, USDA, GIPSA, Room 0623–S, P.O. Box 96454, Washington, DC 20090–6454; FAX (202) 720–4628. Comments may also be sent by electronic mail or Internet to: gwollam@fgis.usda.gov.

All comments received will be available for public inspection during regular business hours in Room 0623–South Building, 1400 Independence Avenue, S.W., Washington, D.C. (7 CFR 1.27(b)).

**FOR FURTHER INFORMATION CONTACT:** George Wollam (202) 720–0292.

**SUPPLEMENTARY INFORMATION:** This regulatory action is being taken as part of the National Performance Review program to eliminate unnecessary regulations and improve those that remain in force.

Executive Order 12866

The Department of Agriculture (Department) is issuing this rule in conformance with Executive Order 12866.

Executive Order 12778

This rule has been reviewed under Executive Order 12778, Civil Justice Reform. This rule is not intended to have preemptive effect with respect to any State or local laws, regulations, or policies unless they present an irreconcilable conflict with this rule. This rule is not intended to have retroactive effect. There are no administrative procedures which must be exhausted prior to any judicial challenge to this rule or the application of its provisions.

Effect on Small Entities

This action was reviewed under the Regulatory Flexibility Act (RFA) (5 U.S.C 601 *et seq.*). The Administrator of (GIPSA) has determined that this action will not have a significant economic impact on a substantial number of small entities. Although this action will remove provisions from the CFR, small entities should see no changes as the standards will be administered under the direction of the Administrator to ensure public input to their formulation and convenient availability to those who want copies of the standards.

Paperwork Reduction Act

In accordance with the provisions of the Paperwork Reduction Act, the information collection requirements contained in the provisions to be amended have been previously approved by the Office of Management and Budget under control number 0580–0013.

Background

The Grain Inspection, Packers and Stockyards Administration is delegated by the Secretary of Agriculture, under the Agricultural Marketing Act of 1946 (AMA), to provide programs for Federal grading/certification services and to develop and establish efficient marketing methods and practices for designated agricultural commodities. For many years these agricultural programs have facilitated the marketing of agricultural commodities by developing official U.S. grade standards which provide uniform language that may be used to describe the characteristics of more than 19 commodities as valued by the market place. The AMA standards are widely used in private contracts, government procurement, marketing communication and, for some commodities, consumer information. The standards through the years have been promulgated as regulations and codified in the CFR.

Rapid changes in consumer preferences, together with associated changes in commodity characteristics, processing technology, and marketing practices have out paced the revision or issuance of regulations. As a result, industry and the marketplace could be burdened with outdated trading language. The President's regulatory review initiative has provided the impetus to develop new approaches to develop new approaches to meet more effectively the needs of U.S. industry, government agencies, and consumers and still reduce the regulatory burden.

To meet this initiative, regulations that are currently in the CFR which could be administered under the authority of GIPSA are being removed from the CFR. With respect to the official grade standards except those used to implement government price support. Therefore, the grade standards for Rice (7 CFR §§ 868.201–316) will continue to appear in the CFR, although the text will also be available from GIPSA, along with other grade standards.

This rule eliminates selected regulations which encompass approximately 22 pages of the CFR covering: Standards for Beans, Whole Dry Peas, Split Peas, and Lentils.

The following is an outline of those standards being removed from the CFR.

| CFR section | Title of standards being removed from the CFR |
|---|---|
| 868.101–142 | Subpart B—United States Standards for Beans. |
| 868.401–410 | Subpart F—United States Standards for Whole Dry Peas. |
| 868.501–510 | Subpart G—United States Standards for Split Peas. |
| 868.601–611 | Subpart H—United States Standards for Lentils. |

To ensure that these standards will be developed, issued, and revised in accordance with procedures that continue to ensure a fair and open process, all new and proposed revisions to standards being removed from the CFR's will be published in the Federal Register as ''Notice'' with adequate time for public comment. A final version of the standard will also be published in the Federal Register.

In developing or revising existing grade standards, the Administrator must first determine that a new or revised standard is needed to facilitate trade in a particular commodity. Second, because use of the standards is voluntary, there must be demonstrated interest and support from the affected industry or other interested parties. And third, the standards must be practical to use.

The initial requests for development or revision of a standard may come from the industry, trade or consumer groups, State departments of agriculture, the U.S. Department of Agriculture, or others. Once a request has been received, GIPSA will coordinate procedures to gather information needed to move forward with the new or revised standard. After this process is completed, a notice of proposed standards change will be published in the Federal Register to solicit comment from any interested parties (normally 30 to 60 days). After evaluating the comments received from interested parties, GIPSA will determine whether to proceed, develop a new proposal, or terminate the process. The public will be informed through a press release and notice in the Federal Register.

In addition to publication in the Federal Register, GIPSA will distribute copies of each standard on request as a pamphlet or other means under the direction of the Administrator of GIPSA.

Pursuant to 5 U.S.C. 553, it is also found and determined upon good cause that it is impracticable, unnecessary, and contrary to the public interest to give preliminary notice prior to putting this rule into effect and that good cause exists for not postponing the effective date of this rule until 30 days after publication in the Federal Register because: (1) The standards are voluntary; (2) no changes are being made to the standards by this docket, and (3) this is in-line with the President's regulatory review initiative.

List of Subjects in 7 CFR Part 868

Administrative practice and procedures, Agricultural commodities, Beans, Whole Dry Peas, Split Peas, and Lentils.

For the reasons set forth in the preamble, 7 CFR Part 868 is amended as follows:

## PART 868—GENERAL REGULATIONS AND STANDARDS FOR CERTAIN AGRICULTURAL COMMODITIES

1. The authority citation for Part 868 continues to read as follows:

Authority: Secs. 202–208, 60 Stat. 1087, as amended (7 U.S.C. 1621 et seq.).

### Subpart B (§§ 868.101–868.142)—[Removed and Reserved]

2. In part 868, Subpart B (§§ 868.101 through 868.142) is removed and reserved.

### Subpart F (§§ 868.401–868.410)—[Removed]

3. In part 868, Subpart F (§§ 868.401 through 868.410) is removed.

### Subpart G (§§ 868.501–868.510)—[Removed]

4. In part 868, Subpart G (§§ 868.501 through 868.510) is removed.

### Subpart H (§§ 868.601–868.611)—[Removed]

5. In part 868, Subpart H (§§ 868.601 through 868.611) is removed.

David R. Shipman,

*Acting Administrator.*

[FR Doc. 96–4587 Filed 2–28–96; 8:45 am]

BILLING CODE 3410–EN–P

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## Agricultural Marketing Service

## 7 CFR Part 979

**[Docket No. FV95–979–1FIR]**

## Melons Grown in South Texas; Increased Expenses and Establishment of Assessment Rate

**AGENCY:** Agricultural Marketing Service, USDA.

**ACTION:** Final rule.

**SUMMARY:** The Department of Agriculture (Department) is adopting as a final rule, without change, the provisions of an amended interim final rule that increased the level of authorized expenses and established an assessment rate to generate funds to pay those expenses under Marketing Order No. 979 for the 1995–96 fiscal period. Authorization of this budget enables the South Texas Melon Committee (Committee) to incur expenses that are reasonable and necessary to administer the program. Funds to administer this program are derived from assessments on handlers.

**EFFECTIVE DATE:** October 1, 1995, through September 30, 1996.

**FOR FURTHER INFORMATION CONTACT:** Martha Sue Clark, Marketing Order Administration Branch, Fruit and Vegetable Division, AMS, USDA, P.O. Box 96456, room 2523–S, Washington, DC 20090–6456, telephone 202–720–9918, or Belinda G. Garza, McAllen Marketing Field Office, Fruit and Vegetable Division, AMS, USDA, 1313 East Hackberry, McAllen, TX 78501, telephone 210–682–2833.

**SUPPLEMENTARY INFORMATION:** This rule is issued under Marketing Agreement No. 156 and Order No. 979 (7 CFR part 979), regulating the handling of melons grown in South Texas, hereinafter referred to as the ''order.'' The order is effective under the Agricultural Marketing Agreement Act of 1937, as amended (7 U.S.C. 601–674), hereinafter referred to as the ''Act.''

The Department is issuing this rule in conformance with Executive Order 12866.

This rule has been reviewed under Executive Order 12778, Civil Justice Reform. Under the marketing order provisions now in effect, South Texas melons are subject to assessments. It is intended that the assessment rate as issued herein will be applicable to all assessable melons handled during the 1995–96 fiscal period, which began October 1, 1995, and ends September 30, 1996. This rule will not preempt any State or local laws, regulations, or policies, unless they present an irreconcilable conflict with this rule.

The Act provides that administrative proceedings must be exhausted before parties may file suit in court. Under section 608c(15)(A) of the Act, any handler subject to an order may file with the Secretary a petition stating that the order, any provision of the order, or any obligation imposed in connection with the order is not in accordance with law and requesting a modification of the order or to be exempted therefrom. A handler is afforded the opportunity for a hearing on the petition. After the hearing the Secretary would rule on the

petition. The Act provides that the district court of the United States in any district in which the handler is an inhabitant, or has his or her principal place of business, has jurisdiction in equity to review the Secretary's ruling on the petition, provided a bill in equity is filed not later than 20 days after the date of the entry of the ruling.

Pursuant to the requirements set forth in the Regulatory Flexibility Act (RFA), the Administrator of the Agricultural Marketing Service (AMS) has considered the economic impact of this rule on small entities.

The purpose of the RFA is to fit regulatory actions to the scale of business subject to such actions in order that small businesses will not be unduly or disproportionately burdened. Marketing orders issued pursuant to the Act, and the rules issued thereunder, are unique in that they are brought about through group action of essentially small entities acting on their own behalf. Thus, both statutes have small entity orientation and compatibility.

There are approximately 30 producers of South Texas melons under this marketing order, and approximately 27 handlers. Since the amended interim final was issued, information regarding a decrease in the number of producers from approximately 40 to 30 and an increase in the number of handlers from approximately 19 to 27 was received. Small agricultural producers have been defined by the Small Business Administration (13 CFR 121.601) as those having annual receipts of less than $500,000, and small agricultural service firms are defined as those whose annual receipts are less than $5,000,000. The majority of South Texas melon producers and handlers may be classified as small entities.

The budget of expenses for the 1995–96 fiscal period was prepared by the South Texas Melon Committee, the agency responsible for local administration of the marketing order, and submitted to the Department for approval. The members of the Committee are producers and handlers of South Texas melons. They are familiar with the Committee's needs and with the costs of goods and services in their local area and are thus in a position to formulate an appropriate budget. The budget was formulated and discussed in a public meeting. Thus, all directly affected persons have had an opportunity to participate and provide input.

The assessment rate recommended by the Committee was derived by dividing anticipated expenses by expected shipments of South Texas melons. Because that rate will be applied to actual shipments, it must be established at a rate that will provide sufficient income to pay the Committee's expenses.

Committee administrative expenses of $234,044 for personnel, office, and compliance expenses were recommended in a mail vote. The assessment rate and funding for research and promotion projects were to be recommended at a later Committee meeting. The Committee administrative expenses of $234,044 were published in the Federal Register as an interim final rule October 23, 1995 (60 FR 54294). That interim final rule added § 979.218, authorizing expenses for the Committee, and provided that interested persons could file comments through November 22, 1995. No comments were filed.

The Committee subsequently met on December 12, 1995, and unanimously recommended an increase of $1,000 for administrative expenses, plus $160,115 in research expenses, for a total budget of $395,159. Budget items for 1995–96 which have increased compared to those budgeted for 1994–95 (in parentheses) are: Manager's salary, $19,094 ($15,172), office salaries, $24,000 ($22,000), payroll taxes, $4,000 ($3,100), insurance, $8,000 ($6,250), rent and utilities, $6,500 ($6,000), supplies, $2,000 ($1,500), postage, $1,500 ($1,000), telephone and telegraph, $4,000 ($2,500), furniture and fixtures, $2,000 ($1,000), equipment rental and maintenance, $3,500 ($2,500), contingencies, $6,000 ($5,278), Committee expenses, $2,000 ($700), manager's travel, $5,000 ($3,000), variety evaluation, $10,875 ($9,186), and $3,750 for deferred compensation (manager's retirement), which was not a line item expense last year. Items which have decreased compared to the amount budgeted for 1994–95 (in parentheses) are: field travel, $4,000 ($5,000), and field salary, $5,500 ($8,000). All other items are budgeted at last year's amounts, including $86,716 for a disease management program, $18,700 for an insect management program, $32,674 for breeding and variety development, and $11,150 for control of melon diseases.

The initial 1995–96 budget, published on October 23, 1995, did not establish an assessment rate. Therefore, the Committee also unanimously recommended an assessment rate of $0.07 per carton, the same as last year. This rate, when applied to anticipated shipments of approximately 4,500,000 cartons, will yield $315,000 in assessment income, which, along with $80,159 from the reserve, will be adequate to cover budgeted expenses. Funds in the reserve as of December 31, 1995, were $398,821, which is within the maximum permitted by the order of two fiscal periods' expenses.

An amended interim final rule was published in the Federal Register on January 4, 1996 (61 FR 248). That interim final rule amended § 979.218 to increase the level of authorized expenses and establish an assessment rate for the Committee. That rule provided that interested persons could file comments through February 5, 1996. No comments were received.

While this action will impose some additional costs on handlers, the costs are in the form of uniform assessments on handlers. Some of the additional costs may be passed on to producers. However, these costs will be offset by the benefits derived from the operation of the marketing order. Therefore, the Administrator of the AMS has determined that this action will not have a significant economic impact on a substantial number of small entities.

After consideration of all relevant matter presented, including the information and recommendations submitted by the Committee and other available information, it is hereby found that this rule, as hereinafter set forth, will tend to effectuate the declared policy of the Act.

It is further found that good cause exists for not postponing the effective date of this rule until 30 days after publication in the Federal Register (5 U.S.C. 553) because the Committee needs to have sufficient funds to pay its expenses which are incurred on a continuous basis. The 1995–96 fiscal period began on October 1, 1995. The marketing order requires that the rate of assessment for the fiscal period apply to all assessable melons handled during the fiscal period. In addition, handlers are aware of this rule which was recommended by the Committee at a public meeting and published in the Federal Register as an amended interim final rule.

List of Subjects in 7 CFR Part 979

Marketing agreements, Melons, Reporting and recordkeeping requirements.

For the reasons set forth in the preamble, 7 CFR part 979 is amended as follows:

## PART 979—MELONS GROWN IN SOUTH TEXAS

Accordingly, the amended interim final rule revising § 979.218 which was published at 61 FR 248 on January 4, 1996, is adopted as a final rule without change.

Dated: February 23, 1996.

Martha B. Ransom,

*Acting Deputy Director, Fruit and Vegetable Division.*

[FR Doc. 96–4704 Filed 2–28–96; 8:45 am]

**BILLING CODE 3410–02–P**

## DEPARTMENT OF THE TREASURY

### Community Development Financial Institutions Fund

### 12 CFR Parts 1805 and 1806

**RIN 1505–AA72**

### Community Development Financial Institutions Program; Bank Enterprise Award Program; Correction

**AGENCY:** Community Development Financial Institutions Fund, Department of the Treasury.

**ACTION:** Correction to interim rule.

**SUMMARY:** This document contains corrections to the interim regulations that were published Tuesday, January 23, 1996 (61 FR 1699). The regulations relate to the Community Development Financial Institutions Program and the Bank Enterprise Award Program.

**EFFECTIVE DATE:** January 23, 1996.

**FOR FURTHER INFORMATION CONTACT:** Kirsten S. Moy, Director, Community Development Financial Institutions Fund at (202) 343–0620. (This is not a toll free number.)

**SUPPLEMENTARY INFORMATION:** The interim regulations that are the subject of these corrections revised the interim regulations for the Community Development Financial Institutions Program and the Bank Enterprise Program that were published in the Federal Register on October 19, 1995 (60 FR 54110). As published, the amendatory instructions contained errors which may prove to be misleading and are in need of clarification.

Accordingly, the publication on January 23, 1996 of the interim regulations, which were the subject of FR Doc. 96–745, is corrected as follows:

1. On page 1701, in the first column, amendatory instruction number 4, in the first line, the citation ''1806.600'' is corrected to read ''1805.600''.

**§ 1806.202 [Corrected]**

2. On page 1702, in the second column, amendatory instruction number 5, in the third line, the citation ''(d)(2)'' is corrected to read ''(b)(2)'', and in the fourth line the citation ''(d)(3)'' is corrected to read ''(b)(3)''.

3. On page 1702, in the third column, amendatory instruction number 7 is correctly designated as amendatory instruction number 6.

Dated: February 23, 1996.

Kirsten S. Moy,

*Director, Community Development Financial Institutions Fund.*

[FR Doc. 96–4666 Filed 2–28–96; 8:45 am]

**BILLING CODE 4810–70–M**

## DEPARTMENT OF TRANSPORTATION

### Federal Aviation Administration

### 14 CFR Part 39

**[Docket No. 95–ANE–54; Amendment 39–9512; AD 96–04–01]**

### Airworthiness Directives; AlliedSignal Inc. TFE731 Series Turbofan Engines

**AGENCY:** Federal Aviation Administration, DOT.

**ACTION:** Final rule; request for comments.

**SUMMARY:** This amendment supersedes an existing airworthiness directive (AD), applicable to AlliedSignal Inc. (formerly Garrett Engine Division) TFE731 series turbofan engines, that currently requires eddy current inspection of certain fan rotor disks for cracks, and replacement, if necessary, with serviceable parts. This amendment requires reinspection of 33 additional fan rotor disks, beyond the quantity of reinspections required by AD 93–25–16. This amendment is prompted by discrepancies in several magnetic tape records discovered as a result of recent improvements in the inspection tape review process. The actions specified by this AD are intended to prevent an uncontained failure of the fan rotor disk due to fatigue cracking in the dovetail slots, which can result in inflight engine shutdowns, severe secondary damage, and fan rotor assembly separation from the engine.

**DATES:** Effective March 15, 1996.

The incorporation by reference of certain publications listed in the regulations is approved by the Director of the Federal Register as of March 15, 1996.

Comments for inclusion in the Rules Docket must be received on or before April 29, 1996.

**ADDRESSES:** Submit comments in triplicate to the Federal Aviation Administration (FAA), New England Region, Office of the Assistant Chief Counsel, Attention: Rules Docket No. 95–ANE–54, 12 New England Executive Park, Burlington, MA 01803–5299.

The service information referenced in this AD may be obtained from AlliedSignal Aerospace, Attn: Data Distribution, M/S 64–03/2101–201, P.O. Box 29003, Phoenix, AZ 85038–9003; telephone (602) 365–2493, fax (602) 365–5577. This information may be examined at the FAA, New England Region, Office of the Assistant Chief Counsel, Burlington, MA; or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

**FOR FURTHER INFORMATION CONTACT:** Joseph Costa, Aerospace Engineer, Los Angeles Aircraft Certification Office, FAA, Transport Airplane Directorate, 3960 Paramount Blvd., Lakewood, CA 90712–4137; telephone (310) 627–5246; fax (310) 627–5210.

**SUPPLEMENTARY INFORMATION:** On December 21, 1993, the Federal Aviation Administration (FAA) issued airworthiness directive (AD) 93–25–16, Amendment 39–8780 (59 FR 4, January 3, 1994), applicable to AlliedSignal Inc. (formerly Garrett Engine Division) TFE731–2, –3, and –3R series turbofan engines. That AD requires eddy current inspection of certain fan rotor disks for cracks, and replacement, if necessary, of these fan rotor disks. That action was prompted by reports of an uncontained failure of a fan rotor disk on an Allied Signal Inc. Model TFE731–3 turbofan engine. The FAA investigation determined that a fatigue crack originated in the aft acute corner of the dovetail slot. The fan rotor disk had accumulated a total of 5,291 cycles in service (CIS) at the time of the failure, and had been eddy current inspected in 1990 when the disk had accumulated 4,055 CIS. The fan rotor disk displayed evidence of broaching grooves produced during the manufacture of the blade dovetail slots. These machining grooves may have contributed to the fan rotor disk failure. From a metallurgical analysis, the FAA determined that the failed fan rotor disk had dovetail cracks which were not detected at the time of the eddy current inspection. A review of the eddy current inspection process used to inspect this fan rotor disk and all fan rotor disks inspected prior to May 1991 determined that the inspection process was not acceptable. Those fan rotor disk cracks, if not corrected, could result in an uncontained failure of the fan rotor disk due to fatigue cracking in the dovetail slots, which can result in inflight engine shutdowns, severe secondary damage, and fan rotor assembly separation from the engine.

After 1991, the eddy current inspection process required magnetic tape records (henceforth referred to as tapes) of the eddy current inspection

results for the fan rotor disk dovetail slots. These tapes can be reviewed at any time following the initial inspection without inconveniencing the operator. Since the issuance of that AD, through recent improvements in the inspection tape review process, and continued review of the tapes, the FAA has identified several tape records as having discrepancies. A discrepancy does not always indicate that a crack exists. This superseding AD requires a re-inspection of 33 additional fan rotor disks, beyond the quantity of reinspections required by AD 93–25–16, to ensure that cracked fan rotor disks are removed from service. To date, eddy current inspections have detected fatigue cracks in the dovetail slots in approximately 176 (or 4%) TFE731–2, –2A, –3, and –3R fan rotor disks, and those fan rotor disks have been removed from service.

The FAA has reviewed and approved the technical contents of AlliedSignal Alert Service Bulletin (ASB) No. TFE731–A72–3578, dated May 31, 1995, that describes procedures for an improved, more definitive eddy current inspection for fan rotor disk dovetail slot cracks.

Since an unsafe condition has been identified that is likely to exist or develop on other engines of this same type design, this AD supersedes AD 93–25–16 to require reinspection of 33 additional fan rotor disks, beyond the quantity of reinspections required by AD 93–25–16, to ensure that cracked fan rotor disks are removed from service. This action is required to be accomplished in accordance with the ASB described previously.

Since a situation exists that requires the immediate adoption of this regulation, it is found that notice and opportunity for prior public comment hereon are impracticable, and that good cause exists for making this amendment effective in less than 30 days.

Comments Invited

Although this action is in the form of a final rule that involves requirements affecting flight safety and, thus, was not preceded by notice and an opportunity for public comment, comments are invited on this rule. Interested persons are invited to comment on this rule by submitting such written data, views, or arguments as they may desire. Communications should identify the Rules Docket number and be submitted in triplicate to the address specified under the caption **ADDRESSES**. All communications received on or before the closing date for comments will be considered, and this rule may be amended in light of the comments received. Factual information that supports the commenter's ideas and suggestions is extremely helpful in evaluating the effectiveness of the AD action and determining whether additional rulemaking action would be needed.

Comments are specifically invited on the overall regulatory, economic, environmental, and energy aspects of the rule that might suggest a need to modify the rule. All comments submitted will be available, both before and after the closing date for comments, in the Rules Docket for examination by interested persons. A report that summarizes each FAA-public contact concerned with the substance of this AD will be filed in the Rules Docket.

Commenters wishing the FAA to acknowledge receipt of their comments submitted in response to this notice must submit a self-addressed, stamped postcard on which the following statement is made: ''Comments to Docket Number 95– ANE–54.'' The postcard will be date stamped and returned to the commenter.

The regulations adopted herein will not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, in accordance with Executive Order 12612, it is determined that this final rule does not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

The FAA has determined that this regulation is an emergency regulation that must be issued immediately to correct an unsafe condition in aircraft, and is not a ''significant regulatory action'' under Executive Order 12866. It has been determined further that this action involves an emergency regulation under DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979). If it is determined that this emergency regulation otherwise would be significant under DOT Regulatory Policies and Procedures, a final regulatory evaluation will be prepared and placed in the Rules Docket. A copy of it, if filed, may be obtained from the Rules Docket at the location provided under the caption ''ADDRESSES.''

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Incorporation by reference, Safety.

Adoption of the Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration amends part 39 of the Federal Aviation Regulations (14 CFR part 39) as follows:

## PART 39—AIRWORTHINESS DIRECTIVES

1. The authority citation for part 39 continues to read as follows:

Authority: 49 USC 106(g), 40113, 44701.

### § 39.13 [Amended]

2. Section 39.13 is amended by removing Amendment 39–8780, (59 FR 4, January 3, 1994), and by adding a new airworthiness directive, Amendment 39–9512, to read as follows:

96–04–01 AlliedSignal Inc.: Amendment 39–9512. Docket 95- ANE–54. Supersedes AD 93–25–16, Amendment 39–8780.

*Applicability:* AlliedSignal Inc. (formerly Garrett Engine Division) TFE731–2, –2A, –3, –3R series turbofan engines with fan rotor disks, part numbers (P/N's) 3072162–1 through –4, 3073436–1 through –4, 3073539–2, and 3074529–2, installed on, but not limited to: Avions Marcel Dassault Falcon 10, 50, 100 series; Learjet 31, 35, 36 series; Lockheed-Georgia 1329–23, –25 series; Israel Aircraft Industries 1124 series; Raytheon British Aerospace HS125 series; and Sabreliner NA–265–65 aircraft.

Note: This airworthiness directive (AD) applies to each engine identified in the preceding applicability provision, regardless of whether it has been modified, altered, or repaired in the area subject to the requirements of this AD. For engines that have been modified, altered, or repaired so that the performance of the requirements of this AD is affected, the owner/operator must use the authority provided in paragraph (e) to request approval from the Federal Aviation Administration (FAA). This approval may address either no action, if the current configuration eliminates the unsafe condition, or different actions necessary to address the unsafe condition described in this AD. Such a request should include an assessment of the effect of the changed configuration on the unsafe condition addressed by this AD. In no case does the presence of any modification, alteration, or repair remove any engine from the applicability of this AD.

*Compliance:* Required as indicated, unless accomplished previously.

To prevent an uncontained failure of the fan rotor disk due to fatigue cracking in the dovetail slots, which can result in inflight engine shutdowns, severe secondary damage, and fan rotor assembly separation from the engine, accomplish the following:

(a) No further action is required for fan rotor disks previously eddy current inspected in accordance with the requirements of AD 92–26–09 and AD 93–25–16.

(b) Remove prior to further flight fan rotor disk, P/N 3073539–2 or 3072162–2, with Serial Number (S/N) 8–18040–6300, in accordance with Allied-Signal Inc. Alert Service Bulletin (ASB) No. TFE731–A72–3504, dated November 25, 1992, or AlliedSignal Inc. ASB No. TFE731–A72–

3504, Revision 1, dated July 2, 1993, and replace with a serviceable fan rotor disk.

(c) Incorporate new eddy current inspection procedures in accordance with ASB No. TFE731–A72–3578, dated May 31, 1995, within 30 days after the effective date of this AD. Fan rotor disks requiring eddy current inspection, prior to the incorporation of the new eddy current procedure previously mentioned, may be inspected in accordance with AlliedSignal Inc. ASB No TFE731–A72–3504 dated November 25, 1992, or TFE731–A72–3504, Revision 1, dated July 2, 1993.

(d) Eddy current inspect fan rotor disks, P/N 3072162–1 through –4, 3073436–1 through –4, 3073539–2, and 3074529–2, in accordance with the Accomplishment Instructions of AlliedSignal Inc. ASB No. TFE731–A72–3578, dated May 31, 1995, and if necessary, replace with a serviceable disk, as follows:

(1) For fan rotor disks listed by S/N in Table 2 of Allied-Signal Inc. ASB No. TFE731–A72–3504, dated November 25, 1992, or AlliedSignal Inc. ASB No. TFE731–A72–3504, Revision 1, dated July 2, 1993, inspect, and if necessary, replace with a serviceable fan rotor disk within 50 cycles in service (CIS) after April 9, 1993 (effective date of AD 92–26–09).

(2) For the 10 added fan rotor disks listed by S/N in Table 3 of AlliedSignal Inc. ASB No. TFE731–A72–3504, Revision 1, dated July 2, 1993, with 5,000 or more CIS since new on January 18, 1994 (effective date of AD 93–25–16), inspect, and if necessary, replace with a serviceable fan rotor disk, within the next 50 CIS after January 18, 1994 (effective date of AD 93–25–16).

(3) For fan rotor disks listed by S/N in Table 3 of AlliedSignal Inc. ASB No. TFE731–A72–3504, Revision 1, dated July 2, 1993, other than the 10 added fan rotor disks, with 5,000 or more CIS since new on April 9, 1993, (effective date of AD 92–26–09), inspect, and if necessary, replace with a serviceable fan rotor disk, within the next 50 CIS after April 9, 1993 (effective date of AD 92–26–09).

(4) For the 10 added fan rotor disks listed by S/N in Table 3 of AlliedSignal Inc. ASB No. TFE731–A72–3504, Revision 1, dated July 2, 1993, with less than 5,000 CIS since new on January 18, 1994, (effective date of AD 93–25–16), inspect, and if necessary, replace with a serviceable fan rotor disk within the next 100 CIS after January 18, 1994, (effective date of AD 93–25–16) or prior to accumulating 5,050 CIS since new, whichever occurs first.

(5) For fan rotor disks listed by S/N in Table 3 of AlliedSignal Inc. ASB No. TFE731–A72–3504, Revision 1, dated July 2, 1993, other than the 10 added fan rotor disks, with less than 5,000 CIS since new on April 9, 1993 (effective date of AD 92–26–09), inspect, and if necessary, replace with a serviceable fan rotor disk, within the next 100 CIS after April 9, 1993 (effective date of AD 92–26–09), or prior to accumulating 5,050 CIS since new, whichever occurs first.

(6) For fan rotor disks listed by S/N in Table 4 of AlliedSignal Inc. ASB No. TFE731–A72–3504, Revision 1, dated July 2, 1993, inspect, and if necessary, replace with a serviceable fan rotor disk, within the next 100 CIS after January 18, 1994, (effective date of AD 93–25–16).

(7) For fan rotor disks listed by S/N in Table 1 of AlliedSignal Inc. ASB No. TFE731–A72–3578, dated May 31, 1995, inspect, and if necessary, replace with a serviceable disk, within 50 CIS after the effective date of this AD.

(e) An alternative method of compliance or adjustment of the compliance time that provides an acceptable level of safety may be used if approved by the Manager, Los Angeles Aircraft Certification Office. The request should be forwarded through an appropriate FAA Principal Maintenance Inspector, who may add comments and then send it to the Manager, Los Angeles Aircraft Certification Office.

Note: Information concerning the existence of approved alternative methods of compliance with this airworthiness directive, if any, may be obtained from the Los Angeles Aircraft Certification Office.

(f) Special flight permits may be issued in accordance with sections 21.197 and 21.199 of the Federal Aviation Regulations (14 CFR 21.197 and 21.199) to operate the aircraft to a location where the requirements of this AD can be accomplished.

(g) The actions required by this AD shall be done in accordance with the following service documents:

| Document No. | Pages | Revision | Date |
|---|---|---|---|
| AlliedSignal Inc. ASB No. TFE731–A72–3578 ..... Total pages: 12. | 1–12 | Original .... | May 31, 1995. |
| Allied-Signal Inc. ASB No. TFE731–A72–3504 ..... Total pages: 24. | 1–24 | Original .... | November 25, 1992. |
| Allied-Signal Inc. ASB No. TFE731–A72–3504 ..... Total pages: 28. | 1–28 | Revision 1 | July 2, 1993. |

This incorporation by reference was approved by the Director of the Federal Register in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. Copies may be obtained from AlliedSignal Aerospace, Attn: Data Distribution, M/S 64–03/2101–201, P.O. Box 29003, Phoenix, AZ 85038–9003; telephone (602) 365–2493, fax (602) 365–5577. Copies may be inspected at the FAA, New England Region, Office of the Assistant Chief Counsel, 12 New England Executive Park, Burlington, MA; or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

(h) This amendment becomes effective on March 15, 1996.

Issued in Burlington, Massachusetts, on February 2, 1996.

Jay J. Pardee,

*Manager, Engine and Propeller Directorate, Aircraft Certification Service.*

[FR Doc. 96–4243 Filed 2–28–96; 8:45 am]

**BILLING CODE 4910–13–P**

## 14 CFR Part 39

**[Docket No. 94–ANE–56; Amendment 39–9513; AD 96–04–02]**

## Airworthiness Directives; AlliedSignal Inc., ALF502L Series Turbofan Engines

**AGENCY:** Federal Aviation Administration, DOT.

**ACTION:** Final rule.

**SUMMARY:** This amendment adopts a new airworthiness directive (AD), applicable to AlliedSignal Inc. (formerly Textron Lycoming) ALF502L series turbofan engines, that establishes reduced retirement life limits for stage 1 and stage 3–7 compressors disks, and stage 2 turbine disks, and provides a drawdown schedule for disks already beyond the reduced retirement life limits. This amendment is prompted by new life analyses of these components. The actions specified by this AD are intended to prevent disk failure, which could result in an inflight engine shutdown and extensive engine damage.

**DATES:** Effective April 29, 1996.

The incorporation by reference of certain publications listed in the regulations is approved by the Director of the Federal Register as of April 29, 1996.

**ADDRESSES:** The service information referenced in this AD may be obtained from AlliedSignal Engines, 111 South 34th Street, Phoenix, AZ 85072; telephone (602) 365–2493, fax (602) 365–2210. This information may be examined at the Federal Aviation

Administration (FAA), New England Region, Office of the Assistant Chief Counsel, 12 New England Executive Park, Burlington, MA; or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

**FOR FURTHER INFORMATION CONTACT:** Eugene Triozzi, Aerospace Engineer, Engine Certification Office, FAA, Engine and Propeller Directorate, 12 New England Executive Park, Burlington, MA 01803–5299; telephone (617) 238–7148, fax (617) 238–7199.

**SUPPLEMENTARY INFORMATION:** A proposal to amend part 39 of the Federal Aviation Regulations (14 CFR part 39) to include an airworthiness directive (AD) that is applicable to AlliedSignal Inc. (formerly Textron Lycoming) ALF502L series turbofan engines was published in the Federal Register on February 28, 1995 (60 FR 10811). That action proposed to establish reduced retirement life limits for stage 1 and stage 3–7 compressors disks, and stage 2 turbine disks, and provide a drawdown schedule for disks already beyond the reduced retirement life limits. These actions must be performed in accordance with AlliedSignal Engines Service Bulletin (SB) No. ALF 502 72–0004, Revision 12, dated November 30, 1994, that describes reduced retirement lives for affected components; and AlliedSignal Engines SB No. ALF502L 72–281, dated November 30, 1994, that describes a drawdown schedule for disks already beyond the reduced retirement life limits.

Interested persons have been afforded an opportunity to participate in the making of this amendment. No comments were received on the proposal or the FAA's determination of the cost to the public. The FAA has determined that air safety and the public interest require the adoption of the rule as proposed.

There are approximately 184 engines of the affected design in the worldwide fleet. The FAA estimates that 50 engines installed on aircraft of U.S. registry will be affected by this AD, and that the prorated reduced service life cost based on the cost of a new disk is approximately $16,400 per engine. Based on these figures, the total cost impact of the AD on U.S. operators is estimated to be $820,000.

The regulations adopted herein will not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, in accordance with Executive Order 12612, it is determined that this final rule does not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

For the reasons discussed above, I certify that this action (1) is not a ''significant regulatory action'' under Executive Order 12866; (2) is not a ''significant rule'' under DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and (3) will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. A final evaluation has been prepared for this action and it is contained in the Rules Docket. A copy of it may be obtained from the Rules Docket at the location provided under the caption **ADDRESSES.**

List of Subjects in 14 CFR Part 39

Air Transportation, Aircraft, Aviation safety, Incorporation by reference, Safety.

Adoption of the Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration amends part 39 of the Federal Aviation Regulations (14 CFR part 39) as follows:

## PART 39—AIRWORTHINESS DIRECTIVES

1. The authority citation for part 39 continues to read as follows:

Authority: 49 USC 106(g), 40113, 44701.

**§ 39.13 [Amended]**

2. Section 39.13 is amended by adding the following new airworthiness directive:

94–04–02 AlliedSignal Inc.: Amendment 39–9513. Docket 94- ANE–56.

*Applicability:* AlliedSignal Inc. (formerly Textron Lycoming) ALF502L, L–2, L–2A, L–2C, and L–3 turbofan engines installed on but not limited to Canadair Challenger CL600 series aircraft.

Note: This airworthiness directive (AD) applies to each engine identified in the preceding applicability provision, regardless of whether it has been modified, altered, or repaired in the area subject to the requirements of this AD. For engines that have been modified, altered, or repaired so that the performance of the requirements of this AD is affected, the owner/operator must use the authority provided in paragraph (c) to request approval from the Federal Aviation Administration (FAA). This approval may address either no action, if the current configuration eliminates the unsafe condition, or different actions necessary to address the unsafe condition described in this AD. Such a request should include an assessment of the effect of the changed configuration on the unsafe condition addressed by this AD. In no case does the presence of any modification, alteration, or repair remove any engine from the applicability of this AD.

*Compliance:* Required as indicated, unless accomplished previously.

To prevent disk failure, which could result in an inflight engine shutdown and extensive engine damage, accomplish the following:

(a) Remove from service stage 1 and stage 3–7 compressor disks, and stage 2 turbine disks, in accordance with the drawdown schedule and procedures described in AlliedSignal Engines Service Bulletin (SB) No. ALF502L 72- 281, dated November 30, 1994.

(b) This AD establishes new, reduced retirement life limits for stage 1 and stage 3–7 compressor disks, and stage 2 turbine disks, in accordance with AlliedSignal Engines SB No. ALF 502 72–0004, Revision 12, dated November 30, 1994.

(c) An alternative method of compliance or adjustment of the compliance time that provides an acceptable level of safety may be used if approved by the Manager, Engine Certification Office. The request should be forwarded through an appropriate FAA Principal Maintenance Inspector, who may add comments and then send it to the Manager, Engine Certification Office.

Note: Information concerning the existence of approved alternative methods of compliance with this airworthiness directive, if any, may be obtained from the Engine Certification Office.

(d) Special flight permits may be issued in accordance with sections 21.197 and 21.199 of the Federal Aviation Regulations (14 CFR 21.197 and 21.199) to operate the aircraft to a location where the requirements of this AD can be accomplished.

(e) The actions required by this AD shall be done in accordance with the following AlliedSignal Engines SB's:

| Document No. | Pages | Revision | Date |
|---|---|---|---|
| ALF502L 72–281 ..... Total pages: 4. | 1–4 | Original .... | November 30, 1994. |
| ALF 502 72–0004 ..... Total pages: 23. | 1–23 | 12 ..... | November 30, 1994. |

This incorporation by reference was approved by the Director of the Federal Register in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. Copies may be obtained from AlliedSignal Engines, 111 South 34th Street, Phoenix, AZ 85072; telephone (602) 365–2493, fax (602) 365–2210. Copies may be inspected at the FAA, New England Region, Office of the Assistant Chief Counsel, 12 New England Executive Park, Burlington, MA; or at the Office of the Federal Register, 800 North Capitol Street NW., suite 700, Washington, DC.

(f) This amendment becomes effective on April 29, 1996.

Issued in Burlington, Massachusetts, on February 2, 1996.

Jay J. Pardee,

*Manager, Engine and Propeller Directorate, Aircraft Certification Service.*

[FR Doc. 96–4242 Filed 2–28–96; 8:45 am]

**BILLING CODE 4910–13–P**

## 14 CFR Part 39

**[Docket No. 96–NM–02–AD; Amendment 39–9526; AD 96–03–02 R1]**

## Airworthiness Directives; Boeing Model 767 Series Airplanes

**AGENCY:** Federal Aviation Administration, DOT.

**ACTION:** Final rule; correction.

**SUMMARY:** This amendment clarifies information in an existing airworthiness directive (AD), applicable to certain Boeing Model 767 series airplanes, that currently requires inspections to detect cracking and corrosion of the aft trunnion of the outer cylinder of the main landing gear (MLG) and various follow-on actions. That amendment also provides for termination of the inspections by repairing the outer cylinder and installing new aft trunnion bushings. The actions specified in that AD are intended to prevent the collapse of the MLG due to fracture of the aft trunnion outer cylinder. This amendment clarifies an inspection requirement of that AD. This amendment is prompted by communications received from affected operators that certain of the current requirements of the AD are unclear.

**DATES:** Effective February 16, 1996.

The incorporation by reference of certain publications listed in the regulations was approved previously by the Director of the Federal Register as of February 16, 1996 (61 FR 3552, February 1, 1996).

**ADDRESSES:** The service information referenced in this AD may be obtained from Boeing Commercial Airplane Group, P.O. Box 3707, Seattle, Washington 98124–2207. This information may be examined at the Federal Aviation Administration (FAA), Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington; or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

**FOR FURTHER INFORMATION CONTACT:** James G. Rehrl, Aerospace Engineer, Airframe Branch, ANM–120S, FAA, Transport Airplane Directorate, Seattle Aircraft Certification Office, 1601 Lind Avenue, SW., Renton, Washington 98055–4056; telephone (206) 227–2783; fax (206) 227–1181.

**SUPPLEMENTARY INFORMATION:** On January 22, 1996, the FAA issued AD 96–03–02, amendment 39–9497 (61 FR 3552, February 1, 1996), which is applicable to certain Boeing Model 767 series airplanes. That AD requires various inspections to detect cracking and corrosion of the aft trunnion and various follow-on actions. That AD also provides operators with the option of terminating the requirement for the repetitive inspections by repairing the outer cylinder, and replacing the aft trunnion and crossbolt bushings with new bushings. That action was prompted by a report of the collapse of the right main landing gear (MLG) due to fracture of the aft trunnion outer cylinder. The actions required by that AD are intended to prevent the collapse of the MLG due to stress corrosion cracking of the aft trunnion of the outer cylinder.

Since the issuance of that AD, the FAA has received communications from some affected operators questioning the inspection requirements of paragraph (a) of the AD. That paragraph states that operators are to perform the inspections described in ''Part 3 of the Accomplishment Instructions of Boeing Alert Service Bulletin 767–32A0151, dated November 30, 1995.'' The operators question whether ''Part 3'' is a typographical error that should have read ''paragraph III.''

The FAA finds that clarification is necessary. Paragraph III of Boeing Alert Service Bulletin 767–32A0151 is entitled ''Accomplishment Instructions.'' Within paragraph III are five separate parts, entitled ''Parts 1, 2, 3, 4, and 5,'' each of which describes various inspection procedures and follow-on actions.

The FAA's intent in AD 96–03–02 was to require that operators perform all of the inspections (and follow-on actions) described in Parts 1, 2, 3, 4, and 5, of paragraph III, ''Accomplishment Instructions,'' of the referenced service bulletin. The **SUPPLEMENTARY INFORMATION** section of the preamble to that AD correctly described all of the inspections contained in Parts 1, 2, 3, 4, and 5, of paragraph III of the service bulletin, as those inspections that would be required by the AD. However, the wording of paragraph (a) of AD 96–03–02 inadvertently was published as, ''Perform the inspections described in Part 3 of the Accomplishment Instructions of Boeing Alert Service Bulletin 767–32A0151 * * *'' With this wording, operators may incorrectly interpret paragraph (a) as requiring the accomplishment of only the inspections that are described in Part 3 of paragraph III of the service bulletin. Such misinterpretation could result in operators failing to perform the required inspections that are described in Parts 1, 2, 4, and 5, of paragraph III.

Since it is obvious that, currently, the requirements of AD 96–03–02 are not clearly worded, the FAA has determined that the wording of paragraph (a) of the AD must be revised to clarify the required actions. This action revises paragraph (a) to state that operators must perform all of the inspections described in paragraph III, ''Accomplishment Instructions,'' of the Boeing alert service bulletin.

Action is taken herein to clarify these requirements of AD 96–03–02 and to correctly add the AD as an amendment to section 39.13 of the Federal Aviation Regulations (14 CFR 39.13).

The final rule is being reprinted in its entirety for the convenience of affected operators. The effective date remains February 16, 1996.

Since this action only clarifies a current requirement, it has no adverse economic impact and imposes no additional burden on any person. Therefore, notice and public procedures hereon are unnecessary.

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Incorporation by reference, Safety.

Adoption of the Correction

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration amends part 39 of the Federal Aviation Regulations (14 CFR part 39) as follows:

## PART 39—AIRWORTHINESS DIRECTIVES

1. The authority citation for part 39 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40113, 44701.

**§ 39.13 [Amended]**

2. Section 39.13 is amended by removing amendment 39–9497 (61 FR 3552, February 1, 1996), and by adding a new airworthiness directive (AD), amendment 39–9526, to read as follows:

96–03–02 R1 Boeing: Amendment 39–9526. Docket 96–NM–02–AD. Revises AD 96–03–02, Amendment 39–9497.

*Applicability:* Model 767 series airplanes having line numbers 001 through 609, on which the terminating action described in paragraph (e) of this AD has not been accomplished; certificated in any category.

Note 1: This AD applies to each airplane identified in the preceding applicability provision, regardless of whether it has been modified, altered, or repaired in the area subject to the requirements of this AD. For airplanes that have been modified, altered, or repaired so that the performance of the requirements of this AD is affected, the owner/operator must request approval for an alternative method of compliance in accordance with paragraph (g) of this AD. The request should include an assessment of the effect of the modification, alteration, or repair on the unsafe condition addressed by this AD; and, if the unsafe condition has not been eliminated, the request should include specific proposed actions to address it.

*Compliance:* Required as indicated, unless accomplished previously.

To prevent the collapse of the main landing gear (MLG) due to stress corrosion cracking of the aft trunnion of the outer cylinder, accomplish the following:

(a) Perform the inspections described in paragraph III, Accomplishment Instructions, of Boeing Alert Service Bulletin 767–32A0151, dated November 30, 1995, to detect cracking and corrosion of the aft trunnion of the outer cylinder of the MLG at the time specified in paragraph (a)(1), (a)(2), or (a)(3) of this AD, as applicable. These inspections are to be accomplished in accordance with Figure 1 of that alert service bulletin. Repeat these inspections thereafter at the intervals specified in that alert service bulletin. To determine the category in which an airplane falls, the age of the outer cylinder of the MLG is to be calculated as of the effective date of this AD. For airplanes on which the age of the right MLG differs from the age of the left MLG, an operator may place the airplane into a category that is the higher (numerically) of the two categories to ease its administrative burden, and to simplify the recordkeeping requirements imposed by this AD. Once the category into which an airplane falls is determined, operators must obtain approval from the Manager, Seattle Aircraft Certification Office (ACO), FAA, Transport Airplane Directorate, to move that airplane into another category.

Note 2: The broken (dash) lines used in Figure 1 of Boeing Alert Service Bulletin 767–32A0151, dated November 30, 1995, denote ''go to'' actions for findings of discrepancies detected during any of the inspections required by this AD.

Note 3: Boeing Alert Service Bulletin 767–32A0151, dated November 30, 1995, refers to Boeing Alert Service Bulletin 767–32A0148, dated December 21, 1995, for procedures to repair the outer cylinder and replace the bushings in the outer cylinder of the MLG with new bushings.

(1) For airplanes identified as Category 3 in paragraph I.C. of Boeing Alert Service Bulletin 767–32A0151, dated November 30, 1995: Perform the initial inspections within 30 days after the effective date of this AD.

(2) For airplanes identified as Category 2 in paragraph I.C. of Boeing Alert Service Bulletin 767–32A0151, dated November 30, 1995: Perform the initial inspections within 90 days after the effective date of this AD.

(3) For airplanes identified as Category 1 in paragraph I.C. of Boeing Alert Service Bulletin 767–32A0151, dated November 30, 1995: Perform the initial inspections prior to the accumulation of 2½ years since the MLG outer cylinder was new or overhauled, or within 150 days after the effective date of this AD, whichever occurs later.

(b) If no cracking or corrosion is detected, accomplish the follow-on actions described in the Boeing Alert Service Bulletin 767–32A0151, November 30, 1995, at the time specified in the alert service bulletin. These follow-on actions are to be accomplished in accordance with that alert service bulletin.

(c) If any cracking is detected, prior to further flight, replace the outer cylinder with a new or serviceable outer cylinder in accordance with Boeing Alert Service Bulletin 767–32A0151, dated November 30, 1995.

(d) If any corrosion is detected, accomplish the follow-on actions at the time specified in the ''Corrosion Flowchart,'' in Figure 1 of Boeing Alert Service Bulletin 767–32A0151, dated November 30, 1995. The follow-on actions are to be accomplished in accordance with that alert service bulletin.

(e) Repair of the outer cylinder and replacement of the bushings in the aft trunnion and crossbolt of the MLG with new bushings in accordance with Boeing Alert Service Bulletin 767–32A0148, dated December 21, 1995, constitute terminating action for the inspection requirements of this AD, and for the requirements of AD 95–19–10, amendment 39–9372, and AD 95–20–51, amendment 39–9398. Boeing Alert Service Bulletin 767–32A0148, dated December 21, 1995, refers to Component Maintenance Manual (CMM) 32–11–40. Operators should note that, although the CMM specifies plugging the aft trunnion lubrication fitting with a rivet, this AD does not require plugging the lube fitting to terminate the requirement of this AD, AD 95–19–10, or AD 95–20–51.

(f) Accomplishment of the requirements of this AD is considered acceptable for compliance with AD 95–19–10, amendment 39–9372, and AD 95–20–51, amendment 39–9398.

(g) An alternative method of compliance or adjustment of the compliance time that provides an acceptable level of safety may be used if approved by the Manager, Seattle ACO. Operators shall submit their requests through an appropriate FAA Principal Maintenance Inspector, who may add comments and then send it to the Manager, Seattle ACO.

Note 4: Information concerning the existence of approved alternative methods of compliance with this AD, if any, may be obtained from the Seattle ACO.

(h) Special flight permits may be issued in accordance with sections 21.197 and 21.199 of the Federal Aviation Regulations (14 CFR 21.197 and 21.199) to operate the airplane to a location where the requirements of this AD can be accomplished.

(i) The actions shall be done in accordance with Boeing Alert Service Bulletin 767–32A0151, dated November 30, 1995, and Boeing Alert Service Bulletin 767–32A0148, dated December 21, 1995. This incorporation by reference was approved previously by the Director of the Federal Register, in accordance with 5 U.S.C. 552(a) and 1 CFR part 51, as of February 16, 1996 (61 FR 3552, February 1, 1996). Copies may be obtained from Boeing Commercial Airplane Group, P.O. Box 3707, Seattle, Washington 98124–2207. Copies may be inspected at the FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington; or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

(j) This amendment is effective on February 16, 1996.

Issued in Renton, Washington, on February 22, 1996.

Darrell M. Pederson,

*Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.*

[FR Doc. 96–4507 Filed 2–28–96; 8:45 am]

BILLING CODE 4910–13–P

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## 14 CFR Part 67

**[Docket No. 27890]**

**RIN 2120–AF42**

## Medical Standards and Certification

**AGENCY:** Federal Aviation Administration, DOT.

**ACTION:** Final rule; disposition of comments.

**SUMMARY:** On September 9, 1994, the Federal Aviation Administration (FAA) issued an emergency final rule amending the general medical standard for first-, second-, and third-class airman medical certificates. The FAA, in the same document, sought public comment on the final rule. This document disposes of the comments received in response to that rule.

**ADDRESSES:** Comments submitted in response to this rulemaking may be examined at the Federal Aviation Administration, Office of the Chief Counsel, Rules Docket, room 915–G, 800 Independence Avenue SW., Washington, DC, weekdays (except Federal holidays) between 830 a.m. and 5 p.m.

**FOR FURTHER INFORMATION CONTACT:** Tina Lombard, Aeromedical Standards Branch, (AAM–210), Office of Aviation Medicine, Federal Aviation Administration, 800 Independence Avenue SW., Washington, DC 20591; telephone (202) 267–9655.

**SUPPLEMENTARY INFORMATION:**

Background

The general medical standard for the three classes of airman medical certificates is detailed in part 67 of Title 14 of the Code of Federal Regulations (14 CFR part 67). A first-class medical certificate is required to exercise the privileges of an airline transport pilot certificate, while second- and third-class medical certificates are required to exercise the privileges of commercial and private pilot certificates, respectively. An applicant who is found to meet the appropriate medical standards is entitled to a medical certificate without restrictions other than the limit of its duration as prescribed in 14 CFR part 67.

An applicant may be ineligible for certification under §§ 67.13(f)(2), 67.15(f)(2), or 67.17(f)(2) if that person has an organic, functional, or structural disease, defect, or limitation that the Federal Air Surgeon finds: (1) makes the applicant unable to safely perform the duties or exercise the privileges of the airman certificate the applicant holds or for which the applicant is applying, or (2) may reasonably be expected within 2 years of Federal Air Surgeon's finding to make the applicant unable to safely perform those duties or exercise those privileges.

Paragraph (f)(2) of §§ 67.13, 67.15, and 67.17 provides the historical basis for denying medical certification in cases where the Federal Air Surgeon has determined that an applicant's medication or other treatment (including prescription, over-the-counter, and nontraditional medication or other treatment remedies) interferes with the applicant's ability to safely perform the duties, or exercise the privileges, of the airman certificate for which the airman is applying or holds.

Notwithstanding the FAA's long-standing medical certification policy and practice regarding medication and other treatment, the U.S. Court of Appeals for the Seventh Circuit determined that paragraph (f)(2) did not provide a basis for denial of medical certification based on medication alone. *Bullwinkel v. Federal Aviation Administration*, 23 F.3d 167, (7th Cir., *reh'g. denied*). The Seventh Circuit's decision that medication alone was not covered by paragraph (f)(2) raised serious safety concerns within the FAA. As a result of those concerns, the FAA on September 9, 1994, promulgated an emergency final rule that was immediately effective to clarify and codify the FAA's policy regarding an individual who holds, or is applying for, an airman medical certificate in a case where medication or other treatment was found to interfere, or may reasonably be expected to interfere, with that individual's ability to safely perform airman duties (57 FR 46706).

The September 9, 1994, emergency final rule amended paragraph (f) of §§ 67.13, 67.15, and 67.17 by adding to each a new paragraph (3), which sets out the standard for certification where medication or other treatment is involved. Each paragraph (f)(3) made ineligible for unrestricted medical certification any applicant whose medication or other treatment is found by the Federal Air Surgeon to make, or may reasonably be expected to make with 2 years after the finding, that applicant unable to safely perform the duties or exercise the privileges of his or her airman certificate. The final rule did not change the FAA's current and long-standing application of the medical certification standards. Rather, its sole purpose was to expressly codify the agency's practice in light of the *Bullwinkel* decision.

Also, for continuity with the current administration of other medical certification procedures, reference to this emergency final rule was added by revising § 67.25, Delegation of authority, and § 67.27, Denial of medical certificate.

The FAA invited public comment on the final rule and established a 60-day comment period, which closed on November 8, 1994.

Discussion of Comments

The FAA received six comments in response to the emergency final rule; four comments opposed and two comments supported the rule. The commenters included five individuals and one association, the Aerospace Medical Association (ASMA).

One commenter states that the FAA was wrong to amend the rules because of a single case. The commenter suggests that a better standard would be to list those drugs in the regulations that would be considered automatically disqualifying or potentially disqualifying.

One commenter characterizes the rule as a major change and objects to it being issued as a final rule without prior public comment. He suggests that the FAA rescind the final rule and schedule the subject for a notice of proposed rulemaking.

One commenter states that his third-class medical certificate was revoked because he was taking a medication to control symptoms of bipolar disorder. He contends that the matter of disqualification should be based solely on the underlying medical condition. He further contends that medication can control symptoms for approximately 80 percent of people with the disorder. The commenter concludes that patients taking certain medications for bipolar disorder are ''effectively cured'' of the underlying condition and should be eligible for medical certification.

One commenter states that there was no cause for issuing an emergency rule and that the FAA's policy was shown in court to be contrary to law. He contends that the FAA's choice of rulemaking procedure was improper. Further, he objects that the September 9, 1994, final rule does not specify the names of all disqualifying medication or treatment which the rule encompasses. He states that the rule enables the FAA to make judgments which may be arbitrary or unreasonable. The commenter suggests that this rulemaking action should have been contained in an overall revision of parts 61 and 67.

The ASMA states that it strongly supports the final rule. Further, the ASMA concurs with the dissenting opinion in the *Bullwinkel* case in that the general medical standard of the airman medical standards should be viewed as including all elements of medicine, i.e., medication and other treatments.

One commenter agrees with the FAA's action but expresses concern about the change in the rules without benefit of prior public comment.

FAA Response

The FAA's rationale for issuing this emergency final rule is fully set out in the preamble to the rule published at 59 FR 46706 on September 9, 1994.

As stated in the preamble to the final rule, the FAA determined an emergency existed that required immediate action; that determination is unchanged by the comments. A delay could have had an adverse effect on aviation safety. Neither a notice of proposed rulemaking nor incorporation of the amendment into a possible part 67 revision, as proposed

by commenters, was determined to be in the public interest.

As to the commenters' call for a ''list'' of disqualifying medications, the Federal Air Surgeon has determined that an exhaustive ''listing'' of specific medications or specific treatments to determine an airman's eligibility is not possible. All the positive and negative effects of any medication or treatment are rarely appreciated when first introduced. In some cases, substantial amounts of time may pass before a particular drug or treatment can be judged with confidence, particularly with its application to individuals in the aviation environment. Because of the continuous changes in the field of medicine and pharmacology, the FAA has determined that publishing a static list of disqualifying medication is not appropriate or practical.

In case where an individual has been determined to have a disqualifying condition and/or use a disqualifying medication or other treatment and requests special issuance of a medical certificate, the Federal Air Surgeon considers not only all relevant scientific data on the particular condition and/or medication or other treatment but also the individual's particular situation and the role that he/she will perform in aviation. The case-by-case review can and does result in instances where the particular condition and/or medication or other treatment precludes the affected individual from receiving even an individually tailored special issuance medical certificate. Conversely, with the availability of new data and experience, some similarly affected individuals may, by adjustments in their medication dosage or other treatment, or restrictions in their privileges, for example, receive special issuance of medical certificates.

Because this careful analysis of each special issuance case is frequently not fully appreciated, the perception exists that many conditions and/or medications or other treatment are always disqualifying. In fact, with the availability of new data and experience, the Federal Air Surgeon has found it safe to issue special medical certificates to the majority of those individuals who historically were always denied. But, as there are literally hundreds of diagnoses, medications, and other treatments, as well as thousands of combinations that frequently change over time, the FAA cannot, as a practical matter, produce a ''list'' of medications and/or treatments that would be considered disqualifying or, conversely, acceptable for airman medical certification.

While at any point in time there may be treatment and medications that preclude the special issuance of a medical certificate, the FAA will continue to seek public comment, when appropriate, as it has done recently concerning insulin-using diabetics (see 59 FR 67426, September 29, 1994), to assist the Federal Air Surgeon in formulating policy on the special issuance of medical certificates.

Finally, the *Bullwinkel* decision highlighted a deficit in FAA procedures that the emergency final rule has now corrected; the agency does not view the decision as finding the policy and practice of the FAA to be ''contrary to law'' as characterized by one commenter. The rule change clarifies and resolves any previous ambiguity in FAA's medical standards regarding medication and/or other treatment.

Conclusion

Accordingly, after careful consideration of all the comments submitted, the FAA has determined that no further rulemaking action is warranted.

Issued in Washington, DC, on February 23, 1996.

Jon L. Jordan,

*Federal Air Surgeon.*

[FR Doc. 96–4686 Filed 2–28–96; 8:45 am]

BILLING CODE 4910–13–M

## 14 CFR Part 71

**[Airspace Docket No. 95–AWP–34]**

## Amendment of Class E Airspace; Winnemucca, NV; Correction

**AGENCY:** Federal Aviation Administration (FAA), DOT.

**ACTION:** Final rule; correction.

**SUMMARY:** This action corrects errors in the geographic coordinates of a final rule that was published in the Federal Register on January 10, 1996, Airspace Docket No. 95–AWP–34, The Final Rule amended Class E airspace at Winnemucca, NV.

**EFFECTIVE DATE:** 0901 UTC February 29, 1996.

**FOR FURTHER INFORMATION CONTACT:** Scott Speer, Airspace Specialist, System Management Branch, AWP–530, Air Traffic Division, Western-Pacific Region, Federal Aviation Administration, 15000 Aviation Boulevard, Lawndale, California 90261, telephone (310) 725–6533.

**SUPPLEMENTARY INFORMATION:**

History

Federal Register Document 96–377, Airspace Docket No. 95–AWP–34, published on January 10, 1996 (61 FR 693), revised the description of the Class E airspace area at Winnemucca, NV. An error was discovered in the geographic coordinates for the Winnemucca, NV, Class E airspace area. This action corrects that error.

Correction to Final Rule

Accordingly, pursuant to the authority delegated to me, the geographic coordinates for the Class E airspace area at Winnemucca, NV, as published in the Federal Register on January 10, 1996 (61 FR 693), (Federal Register Document 96–377), are corrected as follows:

**§ 71.1 [Corrected]**

On page 694, in the second and third columns, the airspace description for Winnemucca, NV, is corrected to read as follows:

* * * * *

AWP NV E5 Winnemucca, NV [Corrected]

Winnemucca Municipal Airport, NV.
(lat. 40°53′47″ N, long. 117°48′21″ W)
Winnemucca NDB
(lat. 40°57′48″ N, long. 117°50′29″ W)
Battle Mountain VORTAC
(lat. 40°34′09″ N, long. 116°55′20″ W)

That airspace extending upward from 700 feet above the surface within a 4.3-mile radius of the Winnemucca Municipal Airport and within 7.8 miles northwest and 4.3 miles east of the Winnemucca NDB 342° and 162° bearings, extended from the 4.3 miles south to 8.7 miles north of the NDB. That airspace extending upward from 1,200 feet above the surface within 4.3 miles northeast and 9.6 miles southwest of the Winnemucca NDB 342° and 162° bearings, extending from the southeast edge of V–113 to 9.6 miles southeast of the NDB and within 4.3 miles each side of the 162° bearing from the Winnemucca NDB, extending from 9.6 miles southeast of the NDB to the north edge of V–32 and within 4.3 miles each side of the Battle Mountain VORTAC 296° radial extending from 10.4 miles to 43.4 miles northwest of the Battle Mountain VORTAC and that airspace bounded by a line beginning at lat. 40°33′00″ N, long. 117°52′00″ W; to lat. 40°37′01″ N, long. 117°47′32″ W; to lat. 40°33′58″ N, long. 117°46′15″ W, thence to the point of beginning and that airspace bounded by a line beginning at lat. 41°05′00″ N, long. 118°12′30″ W; to lat. 41°09′36″ N, long. 118°08′50″ W; to lat. 41°03′00″ N, long. 118°06′00″ W, thence to the point of beginning and that airspace bounded by a line beginning at lat. 40°45′38″ N, long. 117°39′23″ W; to lat. 40°36′30″ N, long. 117°15′15″ W; to lat. 40°35′00″ N, long. 117°34′30″ W, thence to the point of beginning.

* * * * *

Issued in Los Angeles, California, on February 14, 1996.

Leonard A. Mobley,

*Acting Manager, Air Traffic Division, Western-Pacific Region.*

[FR Doc. 96–4560 Filed 2–28–96; 8:45 am]

**BILLING CODE 4910–13–M**

## 14 CFR Part 97

**[Docket No. 28475; Amdt. No. 1712]**

## Standard Instrument Approach Procedures; Miscellaneous Amendments

**AGENCY:** Federal Aviation Administration (FAA), DOT.

**ACTION:** Final rule.

**SUMMARY:** This amendment establishes, amends, suspends, or revokes Standard Instrument Approach Procedures (SIAPs) for operations at certain airports. These regulatory actions are needed because of the adoption of new or revised criteria, or because of changes occurring in the National Airspace System, such as the commissioning of new navigational facilities, addition of new obstacles, or changes in air traffic requirements. These changes are designed to provide safe and efficient use of the navigable airspace and to promote safe flight operations under instrument flight rules at the affected airports.

**DATES:** An effective date for each SIAP is specified in the amendatory provisions.

Incorporation by reference—approved by the Director of the Federal Register on December 31, 1980, and reapproved as of January 1, 1982.

**ADDRESSES:** Availability of matters incorporated by reference in the amendment is as follows:

*For Examination*—

1. FAA Rules Docket, FAA Headquarters Building, 800 Independence Avenue, SW., Washington, DC 20591;

2. The FAA Regional Office of the region in which the affected airport is located; or

3. The Flight Inspection Area Office which originated the SIAP.

*For Purchase*—Individual SIAP copies may be obtained from:

1. FAA Public Inquiry Center (APA–200), FAA Headquarters Building, 800 Independence Avenue, SW., Washington, DC 20591; or

2. The FAA Regional Office of the region in which the affected airport is located.

*By Subscription*—Copies of all SIAPs, mailed once every 2 weeks, are for sale by the Superintendent of Documents, U.S. Government Printing Office, Washington, DC 20402.

**FOR FURTHER INFORMATION CONTACT:** Paul J. Best, Flight Procedures Standards Branch (AFS–420), Technical Programs Division, Flight Standards Service, Federal Aviation Administration, 800 Independence Avenue SW., Washington, DC 20591; telephone (202) 267–8277.

**SUPPLEMENTARY INFORMATION:** This amendment to part 97 of the Federal Aviation Regulations (14 CFR part 97) establishes, amends, suspends, or revokes Standard Instrument Approach Procedures (SIAPs). The complete regulatory description of each SIAP is contained in official FAA form documents which are incorporated by reference in this amendment under 5 U.S.C. 552(a), 1 CFR part 51, and § 97.20 of the Federal Aviation Regulations (FAR). The applicable FAA Forms are identified as FAA Forms 8260–3, 8260–4, and 8260–5. Materials incorporated by reference are available for examination or purchase as stated above.

The large number of SIAPs, their complex nature, and the need for a special format make their verbatim publication in the Federal Register expensive and impractical. Further, airmen do not use the regulatory text of the SIAPs, but refer to their graphic depiction on charts printed by publishers of aeronautical materials. Thus, the advantages of incorporation by reference are realized and publication of the complete description of each SIAP contained in FAA form documents is unnecessary. The provisions of this amendment state the affected CFR (and FAR) sections, with the types and effective dates of the SIAPs. This amendment also identifies the airport, its location, the procedure identification and the amendment number.

### The Rule

The amendment to part 97 is effective upon publication of each separate SIAP as contained in the transmittal. Some SIAP amendments may have been previously issued by the FAA in a National Flight Data Center (FDC) Notice to Airmen (NOTAM) as an emergency action of immediate flight safety relating directly to published aeronautical charts. The circumstances which created the need for some SIAP amendments may require making them effective in less than 30 days. For the remaining SIAPs, an effective date at least 30 days after publication is provided.

Further, the SIAPs contained in this amendment are based on the criteria contained in the U.S. Standard for Terminal Instrument Approach Procedures (TERPS). In developing these SIAPs, the TERPS criteria were applied to the conditions existing or anticipated at the affected airports. Because of the close and immediate relationship between these SIAPs and safety in air commerce, I find that notice and public procedure before adopting these SIAPs are impracticable and contrary to the public interest and, where applicable, that good cause exists for making some SIAPs effective in less than 30 days.

The FAA has determined that this regulation only involves an established body of technical regulations for which frequent and routine amendments are necessary to keep them operationally current. It, therefore—(1) is not a ''significant regulatory action'' under Executive Order 12866; (2) is not a ''significant rule'' under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) does not warrant preparation of a regulatory evaluation as the anticipated impact is so minimal. For the same reason, the FAA certifies that this amendment will not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

### List of Subjects in 14 CFR Part 97

Air Traffic Control, Airports, Navigation (Air).

Issued in Washington, DC on February 23, 1996.

Thomas C. Accardi,

*Director, Flight Standards Service.*

### Adoption of the Amendment

Accordingly, pursuant to the authority delegated to me, part 97 of the Federal Aviation Regulations (14 CFR part 97) is amended by establishing, amending, suspending, or revoking Standard Instrument Approach Procedures, effective at 0901 UTC on the dates specified, as follows:

## PART 97—STANDARD INSTRUMENT APPROACH PROCEDURES

1. The authority citation for part 97 is revised to read as follows:

Authority: 49 U.S.C. 106(g), 40103, 40113, 40120, 44701; and 14 CFR 11.49(b)(2).

2. Part 97 is amended to read as follows:

**§ 97.23, § 97.25, § 97.27, § 97.29, § 97.31, § 97.33, § 97.35—[Amended]**

By amending: § 97.23 VOR, VOR/DME, VOR or TACAN, and VOR/DME

or TACAN; § 97.25 LOC, LOC/DME, LDA, LDA/DME, SDF, SDF/DME; § 97.27 NDB, NDB/DME; § 97.29 ILS, ILS/DME, ISMLS, MLS, MLS/DME, MLS/RNAV; § 97.31 RADAR SIAPs; § 97.33 RNAV SIAPs; and § 97.35 COPTER SIAPs, identified as follows:

* * * *Effective April 25, 1996*

Searcy, AR, Searcy Municipal, GPS RWY 19, Amdt 1
Mesa, AZ, Falcon Fld, GPS RWY 4R, Orig
Colorado Springs, CO, City of Colorado Springs Muni, GPS RWY 17L, Orig
Colorado Springs, CO, City of Colorado Springs Muni, GPS RWY 35L, Orig
Colorado Springs, CO, City of Colorado Springs Muni, GPS RWY 35R, Orig
Rifle, CO, Garfield County Regional, GPS RWY 8, Orig
Kokomo, IN, Kokomo Muni, VOR or GPS RWY 32, Amdt 19
Kokomo, IN, Kokomo Muni, VOR/DME or GPS RWY 23, Amdt 19
Kokomo, IN, Kokomo Muni, ILS RWY 23, Amdt 8
Kokomo, IN, Kokomo Muni, VOR/DME RNAV or GPS RWY 5, Amdt 5
De Quincy, LA, De Quincy Industrial Airpark, GPS RWY 15, Orig
De Quincy, LA, De Quincy Industrial Airpark, GPS RWY 33, Orig
Eunice, LA, Eunice, GPS RWY 34, Orig
Opelousas, LA, St Landry Parish-Ahart Field, GPS RWY 35, Orig
Winnfield, LA, David G. Joyce, GPS RWY 26, Orig
Big Rapids, MI, Roben-Hood, VOR/DME or GPS–A, Amdt 7
Winona, MN, Winona Muni-Max Conrad Field, GPS RWY 29, Orig
Lovelock, NV, Derby Field, GPS RWY 1, Orig
Alamogordo, NM, Alamogorado-White Sands Regional, GPS RWY 3, Orig
Clovis, NM, Clovis Muni, GPS RWY 30, Orig
Tucumcari, NM, Tucumcari Muni, GPS RWY 3, Orig
Zuni Pueblo, NM, Black Rock, GPS RWY 7, Orig
Portland, OR, Portland Intl, LOC/DME RWY 10L, Orig
Dayton, TN, Mark Anton, GPS RWY 21, Orig
Burnet, TX, Burnet Muni Kate Craddock Field, GPS RWY 1, Orig
Clarksville, VA, Marks Muni, VOR/DME–A, Orig
Fond Du Lac, WI, Fond Du Lac County, GPS RWY 36, Orig

* * * *Effective Upon Publication*

Hagerstown, MD, Washington County Regional, ILS RWY 27, Amdt 7
Santa Fe, NM, Santa Fe County Muni, VOR/DME–A, Amdt 1
Santa Fe, NM, Santa Fe County Muni, VOR OR GPS RWY 33, Amdt 9
Santa Fe, NM, Santa Fe County Muni, NDB RWY 2, Amdt 4
Santa Fe, NM, Santa Fe County Muni, ILS RWY 2, Amdt 5

Note: The FAA published procedures in Docket No. 28461; Amdt. No. 1710 to Part 97 of the Federal Aviation Regulations (VOL. 61 FR No. 33 Page 6108; dated Feb. 16, 1996) under Section 97.31 which are hereby amended as follows:

Charlotte, NC, Charlotte/Douglas Intl, RADAR–1, Amdt 19A, CANCELLED; Effective 25 APR 96.
Gastonia, NC, Gastonia Muni, RADAR–1 Amdt 4A, CANCELLED; Effective 28 MAR 96.

[FR Doc. 96–4687 Filed 2–28–96; 8:45 am]
BILLING CODE 4910–13–M

## 14 CFR Part 97

**[Docket No. 28480; Amdt. No. 1714]**

## Standard Instrument Approach Procedures; Miscellaneous Amendments

**AGENCY:** Federal Aviation Administration (FAA), DOT.

**ACTION:** Final rule.

**SUMMARY:** This amendment establishes, amends, suspends, or revokes Standard Instrument Approach Procedures (SIAPs) for operations at certain airports. These regulatory actions are needed because of the adoption of new or revised criteria, or because of changes occurring in the National Airspace System, such as the commissioning of new navigational facilities, addition of new obstacles, or changes in air traffic requirements. These changes are designed to provide safe and efficient use of the navigable airspace and to promote safe flight operations under instrument flight rules at the affected airports.

**DATES:** An effective date for each SIAP is specified in the amendatory provisions.

Incorporation by reference-approved by the Director of the Federal Register on December 31, 1980, and reapproved as of January 1, 1982.

**ADDRESSES:** Availability of matters incorporated by reference in the amendment is as follows:

For Examination

1. FAA Rules Docket, FAA Headquarters Building, 800 Independence Avenue, SW., Washington, DC 20591;
2. The FAA Regional Office of the region in which the affected airport is located; or
3. The Flight Inspection Area Office which originated the SIAP.

For Purchase

Individual SIAP copies may be obtained from:

1. FAA Public Inquiry Center (APA–200), FAA Headquarters Building, 800 Independence Avenue, SW., Washington, DC 20591; or
2. The FAA Regional Office of the region in which the affected airport is located.

By Subscription

Copies of all SIAPs, mailed once every 2 weeks, are for sale by the Superintendent of Documents, U.S. Government Printing Office, Washington, DC 20402.

**FOR FURTHER INFORMATION CONTACT:** Paul J. Best, Flight Procedures Standards Branch (AFS–420), Technical Programs Division, Flight Standards Service, Federal Aviation Administration, 800 Independence Avenue, SW., Washington, DC 20591; telephone (202) 267–8277.

**SUPPLEMENTARY INFORMATION:** This amendment to part 97 of the Federal Aviation Regulations (14 CFR part 97) establishes, amends, suspends, or revokes Standard Instrument Approach Procedures (SIAPs). The complete regulatory description of each SIAP is contained in official FAA form documents which are incorporated by reference in this amendment under 5 U.S.C. 552(a), 1 CFR part 51, and § 97.20 of the Federal Aviation Regulations (FAR). The applicable FAA Forms are identified as FAA Form 8260–5. Materials incorporated by reference are available for examination or purchase as stated above.

The large number of SIAPs, their complex nature, and the need for a special format make their verbatim publication in the Federal Register expensive and impractical. Further, airmen do not use the regulatory text of the SIAPs, but refer to their graphic depiction on charts printed by publishers of aeronautical materials. Thus, the advantages of incorporation by reference are realized and publication of the complete description of each SIAP contained in FAA form documents is unnecessary. The provisions of this amendment state the affected CFR (and FAR) sections, with the types and effective dates of the SIAPs. This amendment also identifies the airport, its location, the procedure identification and the amendment number.

This amendment to part 97 is effective upon publication of each separate SIAP as contained in the transmittal. The SIAPs contained in this amendment are based on the criteria contained in the United States Standard for Terminal Instrument Approach Procedures (TERPS). In developing these SIAPs, the TERPS criteria were applied to the conditions existing or anticipated at the affected airports.

The FAA has determined through testing that current non-localizer type, non-precision instrument approaches developed using the TERPS criteria can be flown by aircraft equipped with

Global Positioning System (GPS) equipment. In consideration of the above, the applicable Standard Instrument Approach Procedure (SIAPs) will be altered to include ''or GPS'' in the title without otherwise reviewing or modifying the procedure. (Once a stand alone GPS procedure is developed, the procedure title will be altered to remove ''or GPS'' from these non-localizer, non-precision instrument approach procedure titles.) Because of the close and immediate relationship between these SIAPs and safety in air commerce, I find that notice and public procedure before adopting these SIAPs are, impracticable and contrary to the public interest and, where applicable, that good cause exists for making some SIAPs effective in less than 30 days.

The FAA has determined that this regulation only involves an established body of technical regulations for which frequent and routine amendments are necessary to keep them operationally current. It, therefore—(1) is not a ''significant regulatory action'' under Executive Order 12866; (2) is not a ''significant rule'' under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) does not warrant preparation of a regulatory evaluation as the anticipated impact is so minimal. For the same reason, the FAA certifies that this amendment will not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

List of Subjects in 14 CFR Part 97

Air traffic control, Airports, Navigation (air).

Issued in Washington, DC, on February 23, 1996.

Thomas C. Accardi,

*Director, Flight Standards Service.*

Adoption of the Amendment

Accordingly, pursuant to the authority delegated to me, part 97 of the Federal Aviation Regulations (14 CFR part 97) is amended by establishing, amending, suspending, or revoking Standard Instrument Approach Procedures, effective at 0901 UTC on the dates specified, as follows:

## PART 97—STANDARD INSTRUMENT APPROACH PROCEDURES

1. The authority citation for part 97 is revised to read as follows:

Authority: 49 U.S.C. 40103, 40113, 40120, 44701; 49 U.S.C. 106(g); and 14 CFR 11.49(b)(2).

2. Part 97 is amended to read as follows:

**§§ 97.23, 97.27, 97.33, 97.35 [Amended]**

By amending: § 97.23 VOR, VOR/DME, VOR or TACAN, and VOR/DME or TACAN; § 97.27 NDB, NDB/DME; § 97.33 RNAV SIAPs; and § 97.35 COPTER SIAPs, identified as follows:

** * * Effective APR 25, 1996*

Stuttgart, AR, Stuttgart Muni, NDB or GPS RWY 18, Amdt 9 Cancelled
Stuttgart, AR, Stuttgart Muni, NDB RWY 18, Amdt 9
Boone, IA, Boone Muni, NDB or GPS RWY 14, Amdt 9 Cancelled
Boone, IA, Boone Muni, NDB RWY 14, Amdt 9
Clinton, IA, Clinton Muni, VOR/DME or GPS RWY 21, Amdt 8 Cancelled
Clinton, IA, Clinton Muni, VOR/DME RWY 21, Amdt 8
Clinton, IA, Clinton Muni, NDB or GPS RWY 14, Amdt 3 Cancelled
Clinton, IA, Clinton Muni, NDB or GPS RWY 14, Amdt 3
De Quincy, LA, De Quincy Industrial Airpark, VOR/DME or GPS RWY 33, Orig Cancelled
De Quincy, LA, De Quincy Industrial Airpark, VOR/DME RWY 33, Orig
De Quincy, LA, De Quincy Industrial Airpark, NDB or GPS RWY 15, Amdt 1 Cancelled
De Quincy, LA, De Quincy Industrial Airpark, NDB RWY 15, Amdt 1
Opelousas, LA, St Landry Parish-Ahart Field, VOR/DME or GPS RWY 35, Orig-A Cancelled
Opelousas, LA, St Landry Parish-Ahart Field, VOR/DME RWY 35, Orig-A
Kaiser/Lake Ozark, MO, Lee C. Fine Memorial, NDB or GPS RWY 21, Amdt 6 Cancelled
Kaiser/Lake Ozark, MO, Lee C. Fine Memorial, NDB RWY 21, Amdt 6
Albemarle, NC, Stanly County, NDB or GPS RWY 22, Orig.
Alamogordo, NM, Alamogordo-While Sands Regional, VOR or GPS RWY 3, Orig Cancelled
Alamogordo, NM, Alamogordo-While Sands Regional, VOR RWY 3, Orig
Las Vegas, NM, Las Vegas Muni, VOR or GPS RWY 2, Amdt 10A Cancelled
Las Vegas, NM, Las Vegas Muni, VOR RWY 2, Amdt. 10A
Las Vegas, NM, Las Vegas Muni, VOR or GPS RWY 20, Amdt 5A Cancelled
Las Vegas, NM, Las Vegas Muni, VOR RWY 20, Amdt 5A
Taos, NM, Taos Muni, NDB or GPS RWY 4, Orig-A Cancelled
Taos, NM, Taos Muni, NDB RWY 4, Orig-A
Zuni Pueblos, NM, Black Rock, VOR/DME or GPS RWY 7, Amdt 1 Cancelled
Zuni Pueblo, NM, Black Rock, VOR/DME RWY 7, Amdt 1
Burnet, TX, Burnet Muni Kate Craddock Field, NDB or GPS RWY 1, Amdt 3 Cancelled
Burnet, TX, Burnet Muni Kate Craddock Field, NDB RWY 1, Amdt 3
Dumas, TX, Moore County, VOR/DME RNAV or GPS RWY 19, Amdt 3 Cancelled
Dumas, TX, Moore County, VOR/DME RNAV RWY 19, Amdt 3
Houston, TX, Houston Intercontinental, NDB or GPS RWY 26, Amdt 1A Cancelled
Houston, TX, Houston Intercontinental, NDB RWY 26, Amdt 1A

[FR Doc. 96–4689 Filed 2–28–96; 8:45 am]
BILLING CODE 4910–13–M

## 14 CFR Part 97

**[Docket No. 28476; Amdt. No. 1713]**

## Standard Instrument Approach Procedures; Miscellaneous Amendments

**AGENCY:** Federal Aviation Administration (FAA), DOT.

**ACTION:** Final rule.

**SUMMARY:** This amendment establishes, amends, suspends, or revokes Standard Instrument Approach Procedures (SIAPs) for operations at certain airports. These regulatory actions are needed because of changes occurring in the National Airspace System, such as the commissioning of new navigational facilities, addition of new obstacles, or changes in air traffic requirements. These changes are designed to provide safe and efficient use of the navigable airspace and to promote safe flight operations under instrument flight rules at the affected airports.

**DATES:** An effective date for each SIAP is specified in the amendatory provisions.

Incorporation by reference—approved by the Director of the Federal Register on December 31, 1980, and reapproved as of January 1, 1982.

**ADDRESSES:** Availability of matter incorporated by reference in the amendment is as follows:

For Examination

1. FAA Rules Docket, FAA Headquarters Building, 800 Independence Avenue. SW., Washington, DC 20591;
2. The FAA Regional Office of the region in which affected airport is located; or
3. The Flight Inspection Area Office which originated the SIAP.

For Purchase

Individual SIAP copies may be obtained from:

1. FAA Public Inquiry Center (APA–200), FAA Headquarters Building, 800 Independence Avenue, SW., Washington, DC 20591; or
2. The FAA Regional Office of the region in which the affected airport is located.

By Subscription

Copies of all SIAPs, mailed once every 2 weeks, are for sale by the

Superintendent of Documents, US Government Printing Office, Washington, DC 20402.

**FOR FURTHER INFORMATION CONTACT:** Paul J. Best, Flight Procedures Standards Branch (AFS–420), Technical Programs Division, Flight Standards Service, Federal Aviation Administration, 800 Independence Avenue, SW., Washington, DC 20591; telephone (202) 267–8277.

**SUPPLEMENTARY INFORMATION:** This amendment to part 97 of the Federal Aviation Regulations (14 CFR part 97) establishes, amends, suspends, or revokes Standard Instrument Approach Procedures (SIAPs). The complete regulatory description on each SIAP is contained in the appropriate FAA Form 8260 and the National Flight Data Center (FDC)/Permanent (P) Notices to Airmen (NOTAM) which are incorporated by reference in the amendment under 5 U.S.C. 552(a), 1 CFR part 51, and § 97.20 of the Federal Aviation Regulations (FAR). Materials incorporated by reference are available for examination or purchase as stated above.

The large number of SIAPs, their complex nature, and the need for a special format make their verbatim publication in the Federal Register expensive and impractical. Further, airmen do not use the regulatory text of the SIAPs, but refer to their graphic depiction of charts printed by publishers of aeronautical materials. Thus, the advantages of incorporation by reference are realized and publication of the complete description of each SIAP contained in FAA form documents is unnecessary. The provisions of this amendment state the affected CFR (and FAR) sections, with the types and effective dates of the SIAPs. This amendment also identifies the airport, its location, the procedure identification and the amendment number.

## The Rule

This amendment to part 97 of the Federal Aviation Regulations (14 CFR part 97) establishes, amends, suspends, or revokes SIAPs. For safety and timeliness of change considerations, this amendment incorporates only specific changes contained in the content of the following FDC/P NOTAM for each SIAP. The SIAP information in some previously designated FDC/Temporary (FDC/T) NOTAMs is of such duration as to be permanent. With conversion to FDC/P NOTAMs, the respective FDC/T NOTAMs have been cancelled.

The FDC/P NOTAMs for the SIAPs contained in this amendment are based on the criteria contained in the U.S. Standard for Terminal Instrument Approach Procedures (TERPS). In developing these chart changes to SIAPs by FDC/P NOTAMs, the TERPS criteria were applied to only these specific conditions existing at the affected airports. All SIAP amendments in this rule have been previously issued by the FAA in a National Flight Data Center (FDC) Notice to Airmen (NOTAM) as an emergency action of immediate flight safety relating directly to published aeronautical charts. The circumstances which created the need for all these SIAP amendments requires making them effective in less than 30 days.

Further, the SIAPs contained in this amendment are based on the criteria contained in the TERPS. Because of the close and immediate relationship between these SIAPs and safety in air commerce, I find that notice and public procedure before adopting these SIAPs are impracticable and contrary to the public interest and, where applicable, that good cause exists for making these SIAPs effective in less than 30 days.

## Conclusion

The FAA has determined that this regulation only involves an established body of technical regulations for which frequent and routine amendments are necessary to keep them operationally current. It, therefore—(1) is not a ''significant regulatory action'' under Executive Order 12866; (2) is not a ''significant rule'' under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) does not warrant preparation of a regulatory evaluation as the anticipated impact is so minimal. For the same reason, the FAA certifies that this amendment will not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

## List of Subjects in 14 CFR Part 97

Air Traffic Control, Airports, Navigation (Air).

Issued in Washington, DC on February 23, 1996.

Thomas C. Accardi,

*Director, Flight Standards Service.*

## Adoption of the Amendment

Accordingly, pursuant to the authority delegated to me, part 97 of the Federal Aviation Regulations (14 CFR part 97) is amended by establishing, amending, suspending, or revoking Standard Instrument Approach Procedures, effective at 0901 UTC on the dates specified, as follows:

## PART 97—STANDARD INSTRUMENT APPROACH PROCEDURES

1. The authority citation for part 97 is revised to read as follows:

Authority: 49 U.S.C. 40103, 40113, 40120, 44701; 49 U.S.C. 106(g); and 14 CFR 11.49(b)(2).

2. Part 97 is amended to reads as follows:

**§§ 97.23, 97.25, 97.27, 97.29, 97.31, 97.33, 97.35 [Amended]**

By amending: § 97.23 VOR, VOR/DME, VOR or TACAN, and VOR/DME or TACAN; § 97.25 LOC, LOC/DME, LDA, LDA/DME, SDF, SDF/DME; § 97.27 NDB, NDB/DME; § 97.29 ILS, ILS/DME, ISMLS, MLS, MLS/DME, MLS/RNAV; § 97.31 RADAR SIAPs; § 97.33 RNAV SIAPs; and § 97.35 COPTER SIAPs, identified as follows:

* * * *Effective Upon Publication*

| FDC date | State | City | Airport | FDC No. | SIAP |
|---|---|---|---|---|---|
| 02/09/96 | TN | Memphis | Memphis Intl | FDC 6/0926 | ILS RWY 36L AMDT 11. . . |
| 02/09/96 | TX | Fort Worth | Fort Worth Meacham Intl | FDC 6/0929 | ILS RWY 16L, AMDT 5. . . |
| 02/10/96 | WV | Lewisburg | Greenbrier Valley | FDC 6/0955 | ILS RWY 4 AMDT 7A. . . |
| 02/12/96 | TX | Fort Worth | Fort Worth Meacham Intl | FDC 6/0973 | NDB OR GPS RWY 16L, AMDT 3. . . |
| 02/12/96 | TX | Fort Worth | Fort Worth Meacham Intl | FDC 6/0974 | NDB OR GPS RWY 34R, AMDT 5. . . |
| 02/13/96 | MN | Brainerd | Brainerd-Crow Wing County Regional. | FDC 6/0999 | ILS RWY 23 AMDT 4. . . |
| 02/13/96 | MN | Brainerd | Brainerd-Crow Wing County Regional. | FDC 6/1000 | VOR/DME RWY 12 AMDT 8. . . |
| 02/14/96 | MN | Cambridge | Cambridge Muni | FDC 6/1009 | NDB OR GPS RWY 34 AMDT 6. . . |

| FDC date | State | City | Airport | FDC No. | SIAP |
|---|---|---|---|---|---|
| 02/14/96 ..... | NE | Falls City ..... | Brenner Field ..... | FDC 6/1017 | NDB OR GPS–A, AMDT 3. . . |
| 02/14/96 ..... | TX | Fort Worth ..... | Fort Worth Meacham Intl ..... | FDC 6/1023 | LOC BC RWY 34R, AMDT 7. . . |
| 02/15/96 ..... | CA | Lakeport ..... | Lampson Field ..... | FDC 6/1036 | NDB OR GPS–A ORIG–A. . . |
| 02/20/96 ..... | CA | Victorville ..... | Southern California Intl ..... | FDC 6/1111 | ILS RWY 17 ORIG. . . |

FR Doc. 96–4688 Filed 2–28–96; 8:45 am]
BILLING CODE 4910–13–M

## DEPARTMENT OF HEALTH AND HUMAN SERVICES

### Food and Drug Administration

### 21 CFR Part 184

**[Docket No. 83G–0062]**

## Direct Food Substances Affirmed as Generally Recognized as Safe; Lactase Enzyme Preparation From Candida Pseudotropicalis

**AGENCY:** Food and Drug Administration, HHS.

**ACTION:** Final rule.

**SUMMARY:** The Food and Drug Administration (FDA) is amending its regulations to affirm that lactase enzyme preparation derived from *Candida pseudotropicalis* for use in milk and milk-derived products to hydrolyze lactose is generally recognized as safe (GRAS). This action is in response to a petition submitted by Pfizer, Inc.

**DATES:** Effective February 29, 1996. The Director of the Office of the Federal Register approves the incorporation by reference in accordance with 5 U.S.C. 552(a) and 1 CFR part 51 of certain publications listed in new § 184.1387, effective February 29, 1996.

**FOR FURTHER INFORMATION CONTACT:** Nega Beru, Center for Food Safety and Applied Nutrition (HFS–206), Food and Drug Administration, 200 C St. SW., Washington, DC 20204, 202–418–3097.

**SUPPLEMENTARY INFORMATION:**

I. Background

In accordance with the procedures described in § 170.35 (21 CFR 170.35), Pfizer, Inc., 235 East 42d St., New York, NY 10017, submitted a petition (GRASP 2G0282) proposing that lactase enzyme preparation from *C. pseudotropicalis* be affirmed as GRAS for use as a direct human food ingredient. (Lactase, the enzyme, is to be distinguished from lactase enzyme preparation, which contains lactase as the principal active component but also contains other components derived from the production organism and fermentation media. This document will refer to the former as ''lactase'' and to the latter as ''lactase enzyme preparation.'') Lactase enzyme preparation is used to hydrolyze lactose in milk and milk products.

FDA published a notice of filing of this petition in the Federal Register of March 29, 1983 (48 FR 13098), and gave interested persons an opportunity to submit comments to the Dockets Management Branch (HFA–305), Food and Drug Administration, 12420 Parklawn Dr., rm. 1–23, Rockville, MD 20857. FDA received no comments in response to that notice.

II. Standards for GRAS Affirmation

Under § 170.30 (21 CFR 170.30), general recognition of safety may be based only on the views of experts qualified by scientific training and experience to evaluate the safety of substances added to food. The basis of such views may be either: (1) Scientific procedures, or (2) in the case of a substance used in food prior to January 1, 1958, experience based on common use in food (§ 170.30(a)). General recognition of safety based upon scientific procedures requires the same quantity and quality of scientific evidence as is required to obtain approval of a food additive and ordinarily is to be based upon published studies, which may be corroborated by unpublished studies and other data and information (§ 170.30(b)). General recognition of safety through experience based on common use in food prior to January 1, 1958, may be determined without the quantity or quality of scientific procedures required for approval of a food additive, and ordinarily is to be based upon generally available data and information concerning the pre-1958 history of use of the food ingredient (§ 170.30(c)).

The petition states that *C. pseudotropicalis* was isolated from dairy products prior to 1958 (Refs. 1 and 2). Therefore, the petition argues, lactase produced by the organism has been part of the human diet for many years and may be presumed to have been in common use in food prior to January 1, 1958. The petition also states that Pfizer, Inc., first began commercial production of lactase enzyme preparation derived from *C. pseudotropicalis* in 1982 for use in certain dairy products.

The agency recognizes that *C. pseudotropicalis* was isolated from dairy products prior to 1958. However, lactase enzyme preparation derived from *C. pseudotropicalis* does not itself have a history of common use as an ingredient in food before 1958. Therefore, the enzyme preparation does not qualify for GRAS status based on a history of common use in food (§ 170.30(c)). Accordingly, FDA has evaluated the enzyme preparation on the basis of scientific procedures under § 170.30(b).

In evaluating this petition, the agency reviewed information concerning: (1) The identity and function of the enzyme, (2) the production and purification of the lactase enzyme preparation, and (3) the safety of the production organism and the finished lactase enzyme preparation.

III. Identity and Technical Effect

Lactase is the accepted name for the enzyme β-D-galactoside galactohydrolase (EC 3.2.1.23), which catalyzes the hydrolysis of the disaccharide lactose to its component monosaccharides, glucose and galactose. Lactase enzyme preparations may be produced by fermentation utilizing any of a large number of microorganisms. A typical example is the enzyme produced by the yeast *Kluyveromyces lactis* (Ref. 3).

The lactase preparation that is the subject of this petition is a soluble enzyme preparation derived from the yeast *C. pseudotropicalis* and is composed of the enzyme lactase as the principal active ingredient, other components derived from the production organism and the fermentation media, residual amounts of processing aids, and substances added as stabilizers or diluents. The petitioned enzyme preparation meets the general and additional requirements for enzyme preparations found in the Food Chemicals Codex, 3d ed. (1981), which are incorporated by reference in § 184.1387 (Ref. 4).

Lactase enzyme preparation is intended for use in hydrolyzing lactose to reduce the lactose content of food products. The petitioner provided published information to demonstrate that lactase enzyme preparation from *C. pseudotropicalis* hydrolyzes lactose in milk and milk products.

IV. Production and Purification of Lactase Enzyme Preparation

The lactase enzyme preparation that is the subject of this petition is produced by controlled aerobic fermentation using a pure culture of the food-derived yeast *C. pseudotropicalis*, aseptically grown in a medium containing suitable food-grade carbohydrates, proteins, mineral salts, and processing aids. The isolated cells are mixed with a warm buffer solution consisting of potassium phosphate (mono- and dibasic) and manganous sulfate and allowed to autolyze for up to 24 hours. The resulting material is clarified to remove cell debris and other insoluble solids, and the lactase-containing yeast extract is concentrated by processes appropriate for food use, including ultrafiltration. Glycerol and/or sorbitol may be added as stabilizers, and suitable preservatives may be incorporated during processing. The stabilized lactase preparation is adjusted to a standard potency using a combination of water mixed with glycerol or sorbitol.

V. Safety Information

In its petition, Pfizer, Inc., provided published information to document that the organism *C. pseudotropicalis* was isolated from dairy products as early as 1952 (Refs. 1 and 2). Pfizer, Inc., argues that since the organism is a copious producer of lactase (Ref. 5), both the organism and the lactase it produces have been ingested by man for many years. In addition, Pfizer, Inc., points out that *C. pseudotropicalis* resembles *K. fragilis* (a yeast, also known as *Saccharomyces fragilis*, that is approved as a direct food additive ((§ 172.896) (21 CFR 172.896))) in all respects except that *C. pseudotropicalis* is unable to reproduce sexually (Refs. 1 and 6). *K. fragilis*, like *C. pseudotropicalis*, has been isolated from dairy products (Refs. 1 and 7); in fact, the organisms are often found together in dairy foods (Ref. 5).

Pfizer, Inc., presented published reports to establish the similarity between *C. pseudotropicalis* and *K. fragilis*. For example, in an electrophoretic comparison of enzymes, a method used to clarify the taxonomical and physiological relationships among strains, the enzymatic patterns of *C. pseudotropicalis* and its perfect state, *K. fragilis*, were shown to coincide (Ref. 8). Further, a study using a deoxyribonucleic acid (DNA) reassociation technique showed that, within the accuracy permitted by the technique, *C. pseudotropicalis* and *K. fragilis* have identical DNA sequences (Ref. 9).

The close similarity between the source microorganism (*C. pseudotropicalis*) and *K. fragilis*, which FDA has determined is safe for use as a direct food additive (§ 172.896), supports the safety of the enzyme preparation (Refs. 10 and 11). Further, the information submitted by the petitioner establishes that lactase produced by both yeasts has been ingested by humans for many years with no reported adverse effects (Ref. 12).

To further document the safety of *C. pseudotropicalis*, Pfizer, Inc., presented a published study which compared the pathogenic potential of several industrial yeasts with that of established pathogens. The study found that neither *C. pseudotropicalis* nor *K. fragilis* produced signs of tissue invasion or disease. The authors of the study categorized both organisms in a group of nonpathogenic organisms (Ref. 13). Finally, Pfizer, Inc., submitted unpublished corroborative studies conducted in mice to confirm the nonpathogenicity of *C. pseudotropicalis*.

After conducting a review of the literature and evaluating these studies, the agency concludes that *C. pseudotropicalis* is neither pathogenic nor toxicogenic (Refs. 14 and 15). Furthermore, the agency has determined that the autolysis and filtration steps used in producing and purifying the lactase enzyme preparation effectively remove viable cells of the production organism (Ref. 15).

Pfizer, Inc., also presented corroborative unpublished toxicity studies to establish the safety of lactase enzyme preparation derived from *C. pseudotropicalis*. These were: (1) An acute oral toxicity study in rats, (2) mutagenic and cytogenetic assays, and (3) 90-day oral toxicity studies in rats and dogs. The agency has evaluated the studies and concludes that the studies showed no evidence of toxicity or genotoxicity (Ref. 16).

Finally, Pfizer, Inc., presented information regarding use levels of the enzyme preparation in milk and milk products. Based on this information, the agency concludes that the use of lactase enzyme preparation from *C. pseudotropicalis* would not add to the total consumption of lactase from all sources because the petitioned enzyme preparation will be substituted for other lactase enzyme preparations currently in use (Ref. 17).

VI. Conclusions

The agency has evaluated the information in the petition, along with other available information, and concludes that lactase enzyme preparation derived from *C. pseudotropicalis* is GRAS. This conclusion is based on published information, corroborated by unpublished data and information.

Therefore, the agency is affirming that lactase enzyme preparation derived from *C. pseudotropicalis* is GRAS with no limits on its conditions of use other than current good manufacturing practice, in accordance with 21 CFR 184.1(b)(1). This GRAS affirmation is based on evaluation of the use of the enzyme preparation to reduce the lactose content of milk and milk-derived food products.

The agency further finds that because the principal active ingredient of the enzyme preparation is safe and because expected impurities in the enzyme preparation do not provide any basis for a safety concern, the general requirements and additional requirements for enzyme preparations given in the Food Chemicals Codex, 3d ed. (1981), pp. 107–110, are adequate as minimum criteria for food-grade lactase enzyme preparations derived from *C. pseudotropicalis*.

VII. Environmental Impact

The agency has determined under 21 CFR 25.24(b)(7) that this action is of a type that does not individually or cumulatively have a significant effect on the human environment. Therefore, neither an environmental assessment nor an environmental impact statement is required.

VIII. Analysis of Impacts

FDA has examined the impact of this final rule under Executive Order 12866 and the Regulatory Flexibility Act (Pub. L. 96–354). Executive Order 12866 directs agencies to assess all costs and benefits of available regulatory alternatives and, when regulation is necessary, to select regulatory approaches that maximize net benefits (including potential economic, environmental, public health and safety effects; distributive impacts; and equity). According to Executive Order 12866, a regulatory action is significant if it meets any one of a number of conditions, including having an annual effect on the economy of $100 million; adversely affecting in a material way a sector of the economy, competition, or jobs; or raising novel legal or policy issues. The Regulatory Flexibility Act requires analyzing options for regulatory relief for small businesses.

FDA finds that this final rule is not a significant regulatory action as defined by Executive Order 12866. The final rule does not raise novel legal or policy

issues. The compliance cost to firms currently in the industry is zero because the rule prohibits no current activity. Potential benefits include the wider use of the enzyme preparation because of reduced uncertainty concerning its regulatory status, and any resources saved by eliminating the need to prepare further petitions to affirm the GRAS status of this use of the enzyme preparation.

Finally, in compliance with the Regulatory Flexibility Act, FDA certifies that the final rule will not have a significant impact on a substantial number of small businesses. The compliance cost to small businesses currently in the industry is zero because no current activity is prohibited under the rule.

IX. Effective Date

As this rule recognizes an exemption from the food additive definition in the Federal Food, Drug, and Cosmetic Act, and from the approval requirements applicable to food additives, no delay in effective date is required by the Administrative Procedure Act (5 U.S.C 553(d)). The rule will therefore be effective immediately (5 U.S.C. 553(d)(1)).

X. References

The following references have been placed on display in the Dockets Management Branch (address above) and may be seen by interested persons between 9 a.m. and 4 p.m., Monday through Friday.

1. Lodder, J., *The Yeasts: A Taxonomic Study*, 2d ed., pp. 345–348, 1025–1027, North Holland Publishing Co., Amsterdam, 1970.

2. Rose, A. H., and J. S. Harrison, *The Yeasts, V 1, Biology of Yeasts*, p. 139, Academic Press, New York, 1969.

3. 21 CFR 184.1388.

4. ''Monograph on Enzyme Preparations,'' in *Food Chemicals Codex*, 3d ed., National Academy Press, Washington, DC, pp. 107–110, 1981.

5. Schmidt, J. L., and J. Lenoir, ''Contribution to the Study of Yeast Flora in Camembert Cheese. Its Development During Ripening,'' *Lait* 58 (577):355–370, 1978.

6. Kreger van Rij, N. J. W., ''*The Yeasts: A Taxonomic Study*,'' pp. 233–234, North Holland Pub. Co., Amsterdam, 1970.

7. Lutwick, L. I., H. J. Phaff, and D. A. Stevens, ''*Kluyveromyces fragilis* as an Opportunistic Fungal Pathogen in Man,'' *Sabouraudia* 18:69–73, 1980.

8. Yamazaki, M., and K. Komagata, ''Asporogenous Yeasts and Their Supposed Ascosporogenous States: An Electrophoretic Comparison of Enzymes,'' *Journal of General and Applied Microbiology*, 28:119–138, 1982.

9. Letter from H. J. Phaff, University of California, Davis, to W. C. Wernau, Pfizer, Inc., February 13, 1980.

10. Memorandum from T. J. McKay, FDA, to M. Custer, FDA, November 8, 1982.

11. Memorandum from C. B. Johnson, FDA, to N. Beru, FDA, February 2, 1994.

12. Memorandum from C. B. Johnson, FDA, to the Direct Additives Branch, FDA, December 6, 1988.

13. Holzschu, D. L. et al., ''Evaluation of industrial yeast for pathogenicity,'' *Sabouraudia* 17:71–78, 1979.

14. Memorandum from P. Mislivec, FDA, to M. Custer, FDA, October 22, 1982.

15. Memorandum from J. M. Madden, FDA, to M. Peiperl, FDA, November 5, 1993.

16. Memorandum from A. N. Milbert, FDA, to V. Prunier, FDA, August 13, 1984.

17. Memorandum from J. Modderman, FDA, to V. Prunier, FDA, November 7, 1984.

List of Subjects in 21 CFR Part 184

Food ingredients, Incorporation by reference.

Therefore, under the Federal Food, Drug, and Cosmetic Act and under authority delegated to the Commissioner of Food and Drugs and redelegated to the Director, Center for Food Safety and Applied Nutrition, 21 CFR part 184 is amended as follows:

## PART 184—DIRECT FOOD SUBSTANCES AFFIRMED AS GENERALLY RECOGNIZED AS SAFE

1. The authority citation for 21 CFR part 184 continues to read as follows:

Authority: Secs. 201, 402, 409, 701 of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 321, 342, 348, 371).

2. New § 184.1387 is added to subpart B to read as follows:

### § 184.1387 Lactase enzyme preparation from Candida pseudotropicalis.

(a) This enzyme preparation is derived from the nonpathogenic, nontoxicogenic yeast *C. pseudotropicalis*. It contains the enzyme lactase (β-D-galactoside galactohydrolase, EC 3.2.1.23), which converts lactose to glucose and galactose. It is prepared from yeast that has been grown by a pure culture fermentation process.

(b) The ingredient meets the general requirements and additional requirements for enzyme preparations in the Food Chemicals Codex, 3d ed. (1981), pp. 107–110, which are incorporated by reference in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. Copies are available from the National Academy Press, 2101 Constitution Ave. NW., Washington, DC 20418, or may be examined at the Center for Food Safety and Applied Nutrition's Library, 200 C St. SW., rm. 3321, Washington, DC, or at the Office of the Federal Register, 800 North Capitol St. NW., suite 700, Washington, DC.

(c) In accordance with § 184.1(b)(1), the ingredient is used in food with no limitations other than current good manufacturing practice. The affirmation of this ingredient as generally recognized as safe as a direct human food ingredient is based upon the following current good manufacturing practice conditions of use:

(1) The ingredient is used as an enzyme, as defined in § 170.3(o)(9) of this chapter, to convert lactose to glucose and galactose.

(2) The ingredient is used in food at levels not to exceed current good manufacturing practice. Current good manufacturing practice is limited to use of this ingredient to reduce the lactose content in milk and milk-derived food products where food standards do not preclude such use.

Dated: February 15, 1996.

Fred R. Shank,

*Director, Center for Food Safety and Applied Nutrition.*

[FR Doc. 96–4629 Filed 2–28–96; 8:45 am]

BILLING CODE 4160–01–F

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## DEPARTMENT OF JUSTICE

## Office of the Attorney General

## 28 CFR Part 81

**[AG Order No. 2009–96]**

**RIN 1105–AA38**

## Designation of Agencies To Receive and Investigate Reports Required Under the Victims of Child Abuse Act

**AGENCY:** Department of Justice.

**ACTION:** Final rule.

**SUMMARY:** This rule carries out the Attorney General's responsibilities under the child abuse reporting provisions of the Victims of Child Abuse Act of 1990 (''VCAA''). The VCAA requires persons engaged in certain specified professions and activities on federal lands or facilities to report incidents of child abuse to the appropriate federal, state, or local agency designated by the Attorney General. In order to facilitate effective reporting, the VCAA requires the Attorney General to ''designate an agency'' to receive and investigate such reports of child abuse. This rule sets forth the Attorney General's designations and certain other matters covered by the VCAA's reporting requirements.

**EFFECTIVE DATE:** This rule is effective April 1, 1996.

**FOR FURTHER INFORMATION CONTACT:** Terry R. Lord, Acting Chief, Child Exploitation and Obscenity Section, Criminal Division, Washington, D.C. 20530, (202) 514–5780.

**SUPPLEMENTARY INFORMATION:**

I. Background

The child abuse reporting provisions of the Victims of Child Abuse Act (VCAA) were enacted as section 226 of the Crime Control Act of 1990, Pub. L. No. 101–647, 104 Stat. 4806, *codified at* 42 U.S.C. 13001–13041, 3796aa–3796aa–8, and 18 U.S.C. 403, 2257, and 3509. As set forth at 42 U.S.C. 13031, the VCAA requires persons engaged in certain professional capacities or activities on federal lands or on federally operated facilities (as well as certain facilities covered by federal contracts) (''covered professional'') to report incidents of child abuse to an agency designated by the Attorney General to receive and investigate such reports. On January 3, 1994, the Department of Justice published a proposed rule promulgating the Attorney General's designation of the agencies to receive and investigate these reports of child abuse (59 FR 37). Having received and considered comments submitted in response to the proposed rule, the Attorney General is now promulgating a final rule on this subject.

Under the provisions of 42 U.S.C. 13031(d), the Attorney General may designate non-federal agencies to receive and investigate the child abuse reports, provided that the designation is formalized by a written agreement. Under the rule, reports of child abuse made pursuant to 42 U.S.C. 13031 are to be submitted to the federal, state, tribal or local law enforcement or child protective services agency that currently has jurisdiction to investigate reports of child abuse or protect child abuse victims in the federal land area or facility in question. Where no agency currently qualifies for designation under the rule, the rule designates the Federal Bureau of Investigation (''FBI'') to receive and investigate the reports of child abuse until another agency qualifies for such designation. If the child abuse reported by the covered professional pursuant to 42 U.S.C. 13031 occurred outside the federal area or facility in question, the designated agency receiving the report must forward the matter to the appropriate authority with jurisdiction over the potential offense. For example, a covered reporting professional may, while working on federal land or in a federally operated facility, learn of facts that give reason to suspect that a child has suffered abuse *outside* the federal area in question. In such a circumstance, the covered professional would report the abuse in the same manner as if the abuse occurred within the federal area in question. The rule contemplates that the designated agency receiving the report will immediately forward the matter to the appropriate authority with jurisdiction outside the federal area in question.

In accordance with 5 U.S.C. 605(b), the Attorney General certifies that this rule will not have a significant adverse economic impact on a substantial number of small entities. This rule has not been reviewed by the Office of Management and Budget pursuant to Executive Order 12866. This rule does not have federalism implications warranting the preparation of a Federalism Assessment in accordance with Executive Order 12612. This rule meets the applicable standards provided in sections 2(a) and 2(b) of Executive Order 12778. Notice of the proposed rule was published in the Federal Register on January 3, 1994, and comments were solicited (59 FR 37). A discussion of comments received pursuant to that notice follows.

II. Summary of Comments and Department's Responses

Comments on the proposed rule were received from a number of affected federal and state agencies. Set forth below is a summary of those comments and the Department's response to them.

*Comments from the New Jersey Division of Youth and Family Services*:

1. A distinction should be made between child abuse offenses committed against children by caregivers and child assault offenses committed by other adults.

*Response*: Such a distinction is not contemplated or authorized by the underlying statutory requirement, 42 U.S.C. 13031. The statutory reporting requirement is not qualified by any distinction concerning the status of persons committing the abuse in question.

2. The list of ''covered professionals'' mandated to report child abuse or neglect should be expanded to include additional employees on federal land.

*Response:* This list cannot be expanded because to do so would exceed the scope permitted by the enabling statute. *See* 42 U.S.C. 13031(b). The statute specifically designates the mandated reporters by their profession or activity.

3. The proposed rule does not address the reporting of child abuse occurring *off* federal land or facilities, but which becomes known to mandated reporters employed at those locations.

*Response:* The rule has been clarified to mandate that covered professionals report any incident of suspected child abuse as defined in the statute, regardless of where the abuse occurred. If the incident of suspected child abuse occurred outside the federal area or facility in question, the designated agency receiving the report must forward the matter to the appropriate authority with jurisdiction.

*Comments from Family Advocacy Program, The Office of the Assistant Secretary of Defense:*

1. Federal ''covered professionals'' must be required to report incidents of abuse or neglect regardless of where the alleged abuse occurred.

*Response:* As indicated in response to comment 3 from the New Jersey Division of Youth and Family Services, the rule has been clarified as requested.

2. Amend Section 81.2 of the proposed rule so that the federal agencies or administrators on federal lands or federally operated or contracted facilities have ''primary responsibility'' for entering into a Memorandum of Understanding or other form of formal written agreement for the reporting of suspected cases of child abuse.

*Response:* The rule contemplates that the United States will take the lead in initiating the written agreements where needed.

3. Include a requirement that the FBI ''closely coordinate'' efforts with the local law enforcement or child protective services because the federal authorities do not have the authority to remove a child from the home to prevent further abuse.

*Response:* It is contemplated that the FBI will closely coordinate with local law enforcement and child protective services since federal authorities usually have no jurisdiction to remove a child from the home to prevent further abuse.

*Comments from the Diplomatic Security Service, the United States Department of State:*

1. Indicate that reports of child abuse arising at the United States diplomatic and consular posts abroad should be made to the appropriate Special Agent or Regional Security Officer of the Department of State's Diplomatic Security Service.

*Response:* The requested amendment is not necessary because, under the current language of the proposed rule, the Diplomatic Security Service would constitute the ''designated agency'' to receive and investigate reports of child abuse under the circumstances described. Section 81.2 stipulates that ''[r]eports of child abuse required by 42

U.S.C. 13031 shall be made to the local law enforcement agency or local child protective services agency that has jurisdiction to investigate reports of child abuse or to protect child abuse victims in the land area or facility in question.'' The Diplomatic Security Service would therefore be the ''designated agency'' in the circumstances described in this comment, inasmuch as Section 81.5 defines local law enforcement agency to include ''the Federal * * * law enforcement agency that has the primary responsibility for the investigation of an instance of alleged child abuse* * *''

*Comments from the Office of Enforcement and Security Management, United States Department of Interior:*

1. Eliminate from the last sentence of section 81.2 the following: ''* * * or a Federal agency with jurisdiction for the area or facility in question,'' and omit the requirement for a formal written agreement with local law enforcement entities.

*Response:* The provisions of the enabling statute, 42 U.S.C. 13031, preclude adoption of the suggested amendment. We understand that the underlying concern behind the Department of Interior request is apprehension that an administratively crippling number of agreements would be needed in Bureau of Land Management (''BLM'') areas. However, the Department does not interpret the term ''federal lands'' as used in 42 U.S.C. 13031 to include those lands held by the United States merely as a proprietor as distinguished form those lands over which the United States is empowered to exercise legislative jurisdiction. *See generally Adams* v. *United States,* 319 U.S. 312 (1943); *James* v. *Dravo Contracting Co.,* 302 U.S. 134, 139 (1937). It is our understanding that most land managed by BLM falls within the former category. Congress could not reasonably have intended to include such lands within the term ''federal lands'' as used in the Victims of Child Abuse statute. Therefore, the mandates of the rule and enabling legislation do not apply to such merely proprietary lands managed by BLM.

List of Subjects in 28 CFR Part 81

Child abuse, Federal buildings and facilities.

For the reasons set forth in the preamble, and by virtue of the authority vested in me as Attorney General, including 28 U.S.C. 509 and 510, 5 U.S.C. 301, and 42 U.S.C. 13031, and Public Law 101–647 (104 Stat. 4806), part 81 of chapter I of title 28 of the Code of Federal Regulations is added as follows:

## PART 81—CHILD ABUSE REPORTING DESIGNATIONS AND PROCEDURES

Sec.

81.1 Purpose.
81.2 Submission of reports; designation of agencies to receive reports of child abuse.
81.3 Designation of Federal Bureau of Investigation.
81.4 Referral of reports where designated agency is not a law enforcement agency.
81.5 Definitions.

Authority: 28 U.S.C. 509, 510; 42 U.S.C. 13031.

### § 81.1 Purpose.

The regulations in this part designate the agencies that are authorized to receive and investigate reports of child abuse under the provisions of section 226 of the Victims of Child Abuse Act of 1990, Public Law 101–647, 104 Stat. 4806, codified at 42 U.S.C. 13031.

### § 81.2 Submission of reports; designation of agencies to receive reports of child abuse.

Reports of child abuse required by 42 U.S.C. 13031 shall be made to the local law enforcement agency or local child protective services agency that has jurisdiction to investigate reports of child abuse or to protect child abuse victims in the land area or facility in question. Such agencies are hereby respectively designated as the agencies to receive and investigate such reports, pursuant to 42 U.S.C. 13031(d), with respect to federal lands and federally operated or contracted facilities within their respective jurisdictions, provided that such agencies, if non-federal, enter into formal written agreements to do so with the Attorney General, her delegate, or a federal agency with jurisdiction for the area or facility in question. If the child abuse reported by the covered professional pursuant to 42 U.S.C. 13031 occurred outside the federal area or facility in question, the designated local law enforcement agency or local child protective services agency receiving the report shall immediately forward the matter to the appropriate authority with jurisdiction outside the federal area in question.

### § 81.3 Designation of Federal Bureau of Investigation.

For federal lands, federally operated facilities, or federally contracted facilities where no agency qualifies for designation under § 81.2, the Federal Bureau of Investigation is hereby designated as the agency to receive and investigate reports of child abuse made pursuant to 42 U.S.C. 13031 until such time as another agency qualifies as a designated agency under § 81.2.

### § 81.4 Referral of reports where the designated agency is not a law enforcement agency.

Where a report of child abuse received by a designated agency that is not a law enforcement agency involves allegations of sexual abuse, serious physical injury, or life-threatening neglect of a child, that agency shall immediately report such occurrence to a law enforcement agency with authority to take emergency action to protect the child.

### § 81.5 Definitions.

*Local child protective services agency* means that agency of the federal government, of a state, of a tribe or of a local government that has the primary responsibility for child protection within a particular portion of the federal lands, a particular federally operated facility, or a particular federally contracted facility in which children are cared for or reside.

*Local law enforcement agency* means that federal, state, tribal or local law enforcement agency that has the primary responsibility for the investigation of an instance of alleged child abuse occurring within a particular portion of the federal lands, a particular federally operated facility, or a particular federally contracted facility in which children are cared for or reside.

Dated: February 18, 1996.

Janet Reno,

*Attorney General.*

[FR Doc. 96–4651 Filed 2–28–96; 8:45 am]

BILLING CODE 4410–01–M

## ENVIRONMENTAL PROTECTION AGENCY

## 40 CFR Part 52

**[CA 71–10–7281a; FRL–5422–9]**

## Approval and Promulgation of Implementation Plans; California State Implementation Plan Revision, Mojave Desert Air Quality Management District and Ventura County Air Pollution Control District

**AGENCY:** Environmental Protection Agency (EPA).

**ACTION:** Direct final rule.

**SUMMARY:** EPA is taking direct final action on revisions to the California State Implementation Plan. The revisions concern rules from the Mojave Desert Air Quality Management District (MDAQMD) and the Ventura County Air

Pollution Control District (VCAPCD). This approval action will incorporate these rules into the federally approved SIP. The intended effect of approving these rules is to regulate emissions of volatile organic compounds (VOCs) in accordance with the requirements of the Clean Air Act, as amended in 1990 (CAA or the Act). The rules control VOC emissions from asphalt roofing operation, semiconductor manufacturing operations, and glycol dehydrators. Thus, EPA is finalizing the approval of these revisions into the California SIP under provisions of the CAA regarding EPA action on SIP submittals, SIPs for national primary and secondary ambient air quality standards and plan requirements for nonattainment areas.

**DATES:** This action is effective on April 29, 1996 unless adverse or critical comments are received by April 1, 1996. If the effective date is delayed, a timely notice will be published in the Federal Register.

**ADDRESSES:** Copies of the rule revisions and EPA's evaluation report for each rule are available for public inspection at EPA's Region IX office during normal business hours. Copies of the submitted rule revisions are available for inspection at the following locations:

Rulemaking Section (A–5–3), Air and Toxics Division, U.S. Environmental Protection Agency, Region IX, 75 Hawthorne Street, San Francisco, CA 94105

Environmental Protection Agency, Air Docket (6102), 401 ''M'' Street, S.W., Washington, D.C. 20460

California Air Resources Board, Stationary Source Division, Rule Evaluation Section, 2020 ''L'' Street, Sacramento, CA 95814

Mojave Desert Air Quality Management District, 15428 Civic Drive, Suite 200, Victorville, CA 92392

Ventura County Air Pollution Control District, 669 County Square Drive, Ventura, CA 93003

**FOR FURTHER INFORMATION CONTACT:** Patricia A. Bowlin, Rulemaking Section (A–5–3), Air and Toxics Division, U.S. Environmental Protection Agency, Region IX, 75 Hawthorne Street, San Francisco, CA 94105, Telephone: (415) 744–1188.

**SUPPLEMENTARY INFORMATION:**

## Applicability

The rules being approved into the California SIP include: MDAQMD Rule 471, Asphalt Roofing Operations; VCAPCD Rule 74.28, Asphalt Roofing Operations; VCAPCD Rule 74.21, Semiconductor Manufacturing; VCAPCD Rule 71.5, Glycol Dehydrators; and VCAPCD Rule 71, Crude Oil and Reactive Organic Compound Liquids. The California Air Resources Board submitted these rules to EPA on December 22, 1994; November 18, 1993; July 13, 1994; and February 24, 1995 (Rules 71 and 71.5) respectively.

## Background

On March 3, 1978, EPA promulgated a list of ozone nonattainment areas under the provisions of the Clean Air Act, as amended in l977 (1977 Act or pre-amended Act), that included the Southeast Desert Modified AQMA Area[1] and the Ventura County Area. 43 FR 8964, 40 CFR 81.305. On May 26, 1988, EPA notified the Governor of California, pursuant to section 110(a)(2)(H) of the 1977 Act, that the above districts' portions of the California SIP were inadequate to attain and maintain the ozone standard and requested that deficiencies in the existing SIP be corrected (EPA's SIP-Call). On November 15, 1990, the Clean Air Act Amendments of 1990 were enacted. Pub. L. 101–549, 104 Stat. 2399, codified at 42 U.S.C. 7401–7671q. In amended section 182(a)(2)(A) of the CAA, Congress statutorily adopted the requirement that nonattainment areas fix their deficient reasonably available control technology (RACT) rules for ozone and established a deadline of May 15, 1991 for states to submit corrections of those deficiencies.

Section 182(a)(2)(A) applies to areas designated as nonattainment prior to enactment of the amendments and classified as marginal or above as of the date of enactment. It requires such areas to adopt and correct RACT rules pursuant to pre-amended section 172(b) as interpreted in pre-amendment guidance.[2] EPA's SIP-Call used that guidance to indicate the necessary corrections for specific nonattainment areas. The Southeast Desert Modified AQMA Area is classified as Severe-17, and the Ventura County Area is classified as Severe-15[3]; therefore, these areas were subject to the RACT fix-up requirement and the May 15, 1991 deadline.

The State of California submitted many revised RACT rules for incorporation into its SIP on December 22, 1994; November 18, 1993; July 13, 1994; and February 24, 1995, including the rules being acted on in this notice. This notice addresses EPA's direct-final action for MDAQMD Rule 471, Asphalt Roofing Operations; VCAPCD Rule 74.28, Asphalt Roofing Operations; VCAPCD Rule 74.21, Semiconductor Manufacturing; VCAPCD Rule 71.5, Glycol Dehydrators; and VCAPCD Rule 71, Crude Oil and Reactive Organic Liquids. The MDAQMD adopted Rule 471 on December 21, 1994. The VCAPCD adopted Rule 74.28 on May 10, 1994; Rule 74.21 on April 6, 1993; and Rules 71.5 and 71 on December 13, 1994. These submitted rules were found to be complete on January 3, 1995; September 12, 1994; December 23, 1993; and March 10, 1995 pursuant to EPA's completeness criteria that are set forth in 40 CFR part 51 Appendix V[4] and are being finalized for approval into the SIP.

The submitted rules control VOC emissions from the operation of roofing kettles, the manufacture of semiconductors, and the use of glycol dehydrators. VOCs contribute to the production of ground level ozone and smog. The rules were adopted as part of each district's efforts to achieve the National Ambient Air Quality Standard (NAAQS) for ozone and in response to EPA's SIP-Call and the section 182(a)(2)(A) CAA requirement. The following is EPA's evaluation and final action for these rules.

## EPA Evaluation and Action

In determining the approvability of a VOC rule, EPA must evaluate the rule for consistency with the requirements of the CAA and EPA regulations, as found in section 110 and part D of the CAA and 40 CFR part 51 (Requirements for Preparation, Adoption, and Submittal of Implementation Plans). The EPA interpretation of these requirements, which forms the basis for today's action, appears in the various EPA policy guidance documents listed in footnote 2. Among those provisions is the requirement that a VOC rule must, at a minimum, provide for the implementation of RACT for stationary sources of VOC emissions. This requirement was carried forth from the pre-amended Act.

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[1] Portions of MDAQMD lie within the Southeast Desert Modified AQMA Area.

[2] Among other things, the pre-amendment guidance consists of those portions of the proposed Post-1987 ozone and carbon monoxide policy that concern RACT, 52 FR 45044 (November 24, 1987); ''Issues Relating to VOC Regulation Cutpoints, Deficiencies, and Deviations, Clarification to Appendix D of November 24, 1987 Federal Register Notice'' (Blue Book) (notice of availability was published in the Federal Register on May 25, 1988); and the existing control technique guidelines (CTGs).

[3] Southeast Desert Modified AQMA Area and Ventura County Area retained their designations of nonattainment and were classified by operation of law pursuant to sections 107(d) and 181(a) upon the date of enactment of the CAA. See 55 FR 56694 (November 6, 1991).

[4] EPA adopted the completeness criteria on February 16, 1990 (55 FR 5830) and, pursuant to section 110(k)(1)(A) of the CAA, revised the criteria on August 26, 1991 (56 FR 42216).

For the purpose of assisting state and local agencies in developing RACT rules, EPA prepared a series of Control Technique Guideline (CTG) documents. The CTGs are based on the underlying requirements of the Act and specify the presumptive norms for what is RACT for specific source categories. Under the CAA, Congress ratified EPA's use of these documents, as well as other Agency policy, for requiring States to ''fix-up'' their RACT rules. See section 182(a)(2)(A). There is no CTG applicable to any of the rules being considered in this notice. For source categories that do not have an applicable CTG (such as asphalt roofing operations, semiconductor manufacturing, or glycol dehydrators), state and local agencies may determine what controls are required by reviewing the operation of facilities subject to the regulation and evaluating regulations for similar sources in other areas. Further interpretations of EPA policy are found in the Blue Book, referred to in footnote 2. In general, these guidance documents have been set forth to ensure that VOC rules are fully enforceable and strengthen or maintain the SIP.

MDAQMD's revised Rule 471, Asphalt Roofing Operations, includes the following significant changes from the current SIP version:

- Added definitions for eight (8) rule-specific terms.
- Deleted requirement that vapors emitted from roofing kettles be incinerated, filtered, or processed.
- Added requirement that roofing kettles be equipped with close fitting lids.
- Added temperature limits for material in kettles.
- Added procedures for roofing kettle draining operations.
- Added requirement for kettle vents.
- Specified method to determine compliance with the temperature limits.

VCAPCD Rule 74.28, Asphalt Roofing Operations, is a new rule that requires the following:

- Close fitting lids for roofing kettles.
- Temperature limits for material in kettles.
- Procedures for roofing kettle draining operations.

VCAPCD Rule 74.21, Semiconductor Manufacturing, is a new rule that requires the following:

- Freeboard ratio for solvent cleaning station reservoirs and sinks.
- The use of low VOC solvents outside solvent cleaning stations.
- Solvent cleaning methods.
- Two-year recordkeeping.

VCAPCD Rule 71.5, Glycol Dehydrators, is a new rule that requires the following:

- The use of VOC control system on glycol regenerator vents.
- Two-year recordkeeping.
- Glycol dehydrator vent and vapor disposal system testing methods.

VCAPCD Rule 71, Crude Oil and Reactive Organic Compound Liquids, was revised to include new definitions needed to enforce Rule 71.5.

EPA has evaluated the submitted rules and has determined that they are consistent with the CAA, EPA regulations, and EPA policy. Therefore, MDAQMD Rule 471, Asphalt Roofing Operations; VCAPCD Rule 74.28, Asphalt Roofing Operations; VCAPCD Rule 74.21, Semiconductor Manufacturing; VCAPCD Rule 71.5, Glycol Dehydrators; and VCAPCD Rule 71, Crude Oil and Reactive Organic Compound Liquids, are being approved under section 110(k)(3) of the CAA as meeting the requirements of section 110(a) and part D.

Nothing in this action should be construed as permitting or allowing or establishing a precedent for any future implementation plan. Each request for revision to the state implementation plan shall be considered separately in light of specific technical, economic, and environmental factors and in relation to relevant statutory and regulatory requirements.

EPA is publishing this document without prior proposal because the Agency views this as a noncontroversial amendment and anticipates no adverse comments. However, in a separate document in this Federal Register publication, the EPA is proposing to approve the SIP revision should adverse or critical comments be filed. This action will be effective April 29, 1996, unless, by April 1, 1996, adverse or critical comments are received.

If the EPA receives such comments, this action will be withdrawn before the effective date by publishing a subsequent document that will withdraw the final action. All public comments received will then be addressed in a subsequent final rule based on this action serving as a proposed rule. The EPA will not institute a second comment period on this action. Any parties interested in commenting on this action should do so at this time. If no such comments are received, the public is advised that this action will be effective April 29, 1996.

## Regulatory Process

Under the Regulatory Flexibility Act, 5 U.S.C. 600 et seq., EPA must prepare a regulatory flexibility analysis assessing the impact of any proposed or final rule on small entities. 5 U.S.C. §§ 603 and 604. Alternatively, EPA may certify that the rule will not have a significant impact on a substantial number of small entities. Small entities include small businesses, small not-for-profit enterprises and government entities with jurisdiction over a population of less than 50,000.

SIP approvals under sections 110 and 301(a) and subchapter I, Part D of the CAA do not create any new requirements, but simply approve requirements that the State is already imposing. Therefore, because the Federal SIP-approval does not impose any new requirements, I certify that it does not have a significant impact on any small entities affected. Moreover, due to the nature of the Federal-state relationship under the CAA, preparation of a regulatory flexibility analysis would constitute Federal inquiry into the economic reasonableness of state action. The CAA forbids EPA to base its actions concerning SIPs on such grounds. *Union Electric Co.* v. *U.S. EPA,* 427 U.S. 246, 256–66 (S. Ct. 1976); 42 U.S.C. 7410 (a)(2).

## Unfunded Mandates

Under Sections 202, 203, and 205 of the Unfunded Mandates Reform Act of 1995 (''Unfunded Mandates Act''), signed into law on March 22, 1995, EPA must undertake various actions in association with proposed or final rules that include a Federal mandate that may result in estimated costs of $100 million or more to the private sector or to State, local, or tribal governments in the aggregate.

Through submission of this state implementation plan or plan revision, the State and any affected local or tribal governments have elected to adopt the program provided for under Part D of the Clean Air Act. These rules may bind State, local, and tribal governments to perform certain actions and also require the private sector to perform certain duties. The rules being approved by this action will impose no new requirements because affected sources are already subject to these regulations under State law. Therefore, no additional costs to State, local, or tribal governments or to the private sector result from this action. EPA has also determined that this final action does not include a mandate that may result in estimated costs of $100 million or more to State, local, or tribal governments in the aggregate or to the private sector.

This action has been classified as a Table 3 action for signature by the Regional Administrator under the procedures published in the Federal Register on January 19, 1989 (54 FR 2214–2225), as revised by a July 10, 1995 memorandum from Mary Nichols,

Assistant Administrator for Air and Radiation. The Office of Management and Budget (OMB) has exempted this regulatory action from Executive Order 12866 review.

List of Subjects in 40 CFR Part 52

Environmental protection, Air pollution control, Hydrocarbons, Incorporation by reference, Intergovernmental relations, Ozone, Reporting and recordkeeping requirements, Volatile organic compounds.

Note: Incorporation by reference of the State Implementation Plan for the State of California was approved by the Director of the Federal Register on July 1, 1982.

Dated: January 30, 1996.

Felicia Marcus,

*Regional Administrator.*

Subpart F of part 52, chapter I, title 40 of the Code of Federal Regulations is amended as follows:

## PART 52—[AMENDED]

1. The authority citation for part 52 continues to read as follows:

Authority: 42 U.S.C. 7401–7671q.

## Subpart F—California

2. Section 52.220(c) is amended by adding paragraphs (194)(i)(A)(*4*), (198)(i)(J), (210)(i)(C)(*2*), and (215)(i)(B)(*2*) to read as follows:

**§ 52.220 Identification of plan.**

* * * * *

(c) * * *

(194) * * *

(i) * * *

(A) * * *

(*4*) Rule 74.21, adopted on April 6, 1993.

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(198) * * *

(i) * * *

(J) Ventura County Air Pollution Control District.

(*1*) Rule 74.28, adopted on May 10, 1994.

* * * * *

(210) * * *

(i) * * *

(C) * * *

(*2*) Rule 471, adopted on December 21, 1994.

* * * * *

(215) * * *

(i) * * *

(B) * * *

(*2*) Rule 71 and Rule 71.5, adopted on December 13, 1994.

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[FR Doc. 96–4570 Filed 2–28–96; 8:45 am]

BILLING CODE 6560–50–W

## 40 CFR Part 52

**[OK–11–1–6604a; FRL–5430–3]**

## Approval of Discontinuation of Tail Pipe Lead and Fuel Inlet Test for Vehicle Antitampering Program for Oklahoma

**AGENCY:** Environmental Protection Agency (EPA).

**ACTION:** Direct final rule.

**SUMMARY:** The EPA is approving the State Implementation Plan (SIP) revision submitted by the State of Oklahoma for the purpose of discontinuing the State's tail pipe lead and fuel inlet test in its vehicle antitampering program. The SIP revision also includes minor administrative changes related to the Oklahoma antitampering program. The SIP revision was submitted by the State in response to the dramatic diminished availability of leaded fuel which has resulted in a lack of a need for these tests, not only in Oklahoma but also nationwide. The rationale for the approval is set forth in this document; additional information is available at the address indicated in the **ADDRESSES** section.

**DATES:** This final rule will become effective on April 29, 1996 unless adverse or critical comments are received by April 1, 1996. If the effective date is delayed, timely notice will be published in the Federal Register.

**ADDRESSES:** Written comments on this action should be addressed to Mr. Thomas Diggs, Chief (6PD–L), Air Planning Section, at the EPA Regional Office listed below. Copies of the documents relevant to this action are available for public inspection during normal business hours at the following locations. Interested persons wanting to examine these documents should make an appointment with the appropriate office at least 24 hours before the visiting day.

U.S. Environmental Protection Agency, Region 6, Multimedia Planning & Permitting Division (6PD–L), 1445 Ross Avenue, Suite 700, Dallas, Texas 75202–2733.

Air and Radiation Docket and Information Center, U.S. Environmental Protection Agency, 401 M Street SW., Washington, DC 20460.

Oklahoma Department of Environmental Quality, Air Quality Program, 4545 North Lincoln Blvd., Suite 250, Oklahoma City, Oklahoma 73105–3483.

**FOR FURTHER INFORMATION CONTACT:** Mr. James F. Davis, Air Planning Section (6PD–L), Multimedia Planning & Permitting Division, U.S. Environmental Protection Agency, Region 6, 1445 Ross Avenue, Dallas, Texas 75202–2733, Telephone (214) 665–7584.

**SUPPLEMENTARY INFORMATION:**

I. Background

The SIP revision, discussed in more detail in the Technical Support Document, dated May 24, 1995, is briefly outlined below.

On May 16, 1994, the State of Oklahoma submitted to the U.S. Environmental Protection Agency (EPA) rules for Oklahoma SIP revisions allowing for the exclusions of the Plumbtesmo Lead Detection Test (LDT) and Fuel Inlet Restrictor (FIR) from the State Department of Public Safety's motor vehicle antitampering inspection procedures for Oklahoma City and Tulsa. In addition to the State regulations, Oklahoma submitted a summary and justification documenting the basis for this SIP revision.

In the mid-1980s, EPA established test procedures and emission reduction credits for inspecting and requiring replacement of the catalytic converter when a tailpipe lead test revealed lead deposits in the tail pipe, or when the fuel inlet restrictor was found to be widened to permit refueling with a leaded nozzle. Since the mid-1980s, the availability of leaded fuel and the lead content in the fuel has diminished dramatically. In addition, leaded gasoline has been banned by the Clean Air Act Amendments of 1990 as of December 31, 1995, (§ 211(n)).

II. Analysis

*A. Procedural Background*

The following criteria used to review the submitted SIP revision confirm that the State has demonstrated that the LDT and FIR check is no longer needed in Oklahoma: (1) proof that leaded gasoline is no longer generally available in the Emission Control Areas (ECA) of Tulsa and Oklahoma City, (2) verification that the local fleet has undergone more than one full inspection cycle with virtually no failures and, (3) completion of a State survey coordinated with EPA to determine that the fleet has failed the lead detection test less than 1 percent of the time. This Oklahoma SIP revision meets the criteria necessary for EPA to approve the SIP revision request.

The State's SIP indicates that at the time of the State's Air Quality Council hearing, leaded fuel comprised less than 5 percent of the total fuel sales in Oklahoma, and where it was available it

was more expensive, thus removing an incentive to misfuel. The State also cited a survey conducted in Tulsa in which only 26 of 269 service stations sold leaded gasoline. In addition, the SIP cites figures from the U.S. Department of Energy that show that leaded gasoline comprised about 1 percent of total sales.

The vehicle antitampering program in Oklahoma City has been in place since 1978 to help control carbon monoxide and ozone pollution, and the program in Tulsa has been in place since 1986 to help control ozone pollution. The data submitted by the State showed that the numbers of vehicles failing LDT and FIR are below limits that make the benefit of the tests worthwhile. In 1992, the failure rate for the FIR was less than .06 percent while the failure rate for the LDT was less than .02 percent. In addition, to confirm these statistics the State conducted a survey of over 1,000 vehicles in Tulsa and Oklahoma County and found that no vehicles subject to the antitampering inspection failed the Plumbtesmo LDT.

Also, EPA's Office of Mobile Sources recently issued a guidance memorandum dated September 16, 1994, entitled, ''Discontinuation of Tail Pipe Lead and Fuel Inlet Tests,'' which essentially allows the discontinuation of these tests without a State-submitted demonstration that these tests are no longer necessary. One condition of discontinuation stated in this policy to retain full credit is that the State has performed the tests for at least one test cycle and has required catalyst replacement upon failure. Oklahoma City and Tulsa meet these criteria as well as those discussed above. The EPA has reviewed the Oklahoma SIP revision submitted to the EPA, using the criteria stated above. The Oklahoma regulations represent an acceptable approach to the State's vehicle antitampering program.

## III. Final Action

In this action, the EPA is approving the SIP revision submitted by the State of Oklahoma for removing the Plumbtesmo LDT and FIR test from its vehicle antitampering program.

Copies of the State's SIP revision and the Technical Support Document (TSD), detailing EPA's review of the SIP revision, are available at the address listed in the **ADDRESSES** section above. For a more detailed analysis of the SIP revision, the reader is referred to the TSD.

The EPA is publishing this action without prior proposal because the Agency views this as a noncontroversial revision and anticipates no adverse comments. However, in a separate document in this Federal Register publication, the EPA is proposing to approve the SIP revision should adverse or critical comments be filed. Thus, today's direct final action will be effective April 29, 1996 unless, by April 1, 1996, adverse or critical comments are received.

If the EPA receives such comments, this action will be withdrawn before the effective date by publishing a subsequent document that will withdraw the final action. All public comments received will then be addressed in a subsequent final rule based on this action serving as a proposed rule. The EPA will not institute a second comment period on this action. Any parties interested in commenting on this action should do so at this time. If no such comments are received, the public is advised that this action will be effective April 29, 1996.

Nothing in this action should be construed as permitting, allowing or establishing a precedent for any future request for revision to any SIP. Each request for revision to a SIP shall be considered separately in light of specific technical, economic, and environmental factors and in relation to relevant statutory and regulatory requirements.

Under the Regulatory Flexibility Act, 5 U.S.C. 600 *et seq*, the EPA must prepare a regulatory flexibility analysis assessing the impact of any proposed or final rule on small entities (5 U.S.C. 603 and 604). Alternatively, the EPA may certify that the rule will not have a significant impact on a substantial number of small entities. Small entities include small businesses, small not-for-profit enterprises, and government entities with jurisdiction over populations that are less than 50,000.

The SIP revision approvals under section 110 and subchapter I, part D, of the Act do not create any new requirements, but simply approve requirements that the State is already imposing. Therefore, because the Federal SIP approval does not impose any new requirements, the EPA certifies that this proposed rule would not have a significant impact on any small entities affected. Moreover, due to the nature of the Federal-State relationship under the Act, preparation of a regulatory flexibility analysis would constitute Federal inquiry into the economic reasonableness of State actions. The Act forbids the EPA to base its actions concerning SIP's on such grounds. *Union Electric Co.* v. *U.S.E.P.A.,* 427 U.S. 246, 256–266 (S. Ct. 1976); 42 U.S.C. section 7410(a)(2).

Under section 202 of the Unfunded Mandates Reform Act of 1995 (''Unfunded Mandates Act''), signed into law on March 22, 1995, the EPA must prepare a budgetary impact statement to accompany any proposed or final rule that includes a Federal mandate that may result in estimated costs to State, local, or tribal governments in the aggregate; or to the private sector, of $100 million or more. Under section 205, the EPA must select the most cost-effective and least burdensome alternative that achieves the objectives of the rule and is consistent with statutory requirements. Section 203 requires the EPA to establish a plan for informing and advising any small governments that may be significantly or uniquely impacted by the rule.

The EPA has determined that the approval action promulgated today does not include a Federal mandate that may result in estimated costs of $100 million or more to either State, local, or tribal governments in the aggregate, or to the private sector. This Federal action approves preexisting requirements under State or local law, and imposes no new Federal requirements. Accordingly, no additional costs to State, local, or tribal governments, or to the private sector, result from this action.

This action has been classified as a Table 3 action for signature by the Regional Administrator under the procedures published in the Federal Register on January 19, 1989 (54 FR 2214–2225), as revised by a July 10, 1995, memorandum from Mary Nichols, Assistant Administrator for Air and Radiation. The Office of Management and Budget has exempted this regulatory action from Executive Order 12866 review.

Under section 307(b)(1) of the Act, 42 U.S.C. 7607(b), petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by April 29, 1996. Filing a petition for reconsideration by the Administrator of this final rule does not affect the finality of this rule for the purposes of judicial review nor does it extend the time within which a petition for judicial review may be filed, and shall not postpone the effectiveness of such rule or action. This action may not be challenged later in proceedings to enforce its requirements (See section 307(b)(2)).

## List of Subjects in 40 CFR Part 52

Environmental protection, Air pollution control, Carbon monoxide, Hydrocarbons, Incorporation by reference, Nitrogen dioxide, Reporting and recordkeeping requirements, Volatile organic compounds.

Note: Incorporation by reference of the SIP for the State of Oklahoma was approved by the Director of the Federal Register on July 1, 1982.

Dated: January 12, 1996.

A. Stanley Meiburg,

*Acting Regional Administrator (6A).*

Part 52, chapter I, title 40 of the Code of Federal Regulations is amended as follows:

## PART 52—[AMENDED]

1. The authority citation for part 52 continues to read as follows:

Authority: 42 U.S.C. 7401–7671q.

## Subpart LL—Oklahoma

2. Section 52.1920 is amended by adding paragraph (c)(46) to read as follows:

### § 52.1920 Identification of plan.

* * * * *

(c) * * *

(46) A revision to the Oklahoma SIP to include revisions to Oklahoma Department of Public Safety regulation Title 595, Chapter 20, Subchapter 3—Emission and Mechanical Inspection of Vehicles, Subchapter 7—Inspection Stickers and Monthly Tab Inserts for Windshield and Trailer/Motorcycle, Subchapter 9—Class AE Inspection Station, Vehicle Emission Anti-tampering Inspection and Subchapter 11—Annual Motor Vehicle Inspection and Emission Anti-Tampering Inspection Records and Reports, adopted by the State on April 6, 1994, effective May 26, 1994 and submitted by the Governor on May 16, 1994.

(i) Incorporation by reference.

(A) Revisions to Oklahoma Department of Public Safety regulation Title 595, Chapter 20: 3–1(2); 3–3; 3–5; 3–6; 3–12; 3–25; 3–26; 3–27; 3–41(o); 3–42; 3–46(a) and (b); 3–61(a),(b),(e) and (f); 3–63(b) and (g); 7–1(c) and (f); 7–2(a); 7–3; 7–4(a); 7–5(a); 7–6(a); 7–7(a); 9–1(a); 9–3(l) and (m); 9–7; 9–10(a),(b) and (c); 9–11(a); 9–12(a); 9–13(a); 9–14(a) and (b); 9–15(a); 11–1; 11–2(a); 11–3(a); 11–4 effective May 26, 1994.

(ii) Additional material.

(A) State SIP revision entitled, ''Oklahoma Vehicle Anti-Tampering Program SIP Revision,'' which includes a completeness determination, SIP narrative, hearing records and other documentation relevant to the development of this SIP.

[FR Doc. 96–4567 Filed 2–28–96; 8:45 am]

BILLING CODE 6560–50–P

## 40 CFR Part 52

**[MO–29–1–7151a; FRL–5425–2]**

## Approval and Promulgation of Implementation Plans; State of Missouri

**AGENCY:** Environmental Protection Agency (EPA).

**ACTION:** Direct final rule.

**SUMMARY:** This document takes final action to approve the State Implementation Plans (SIP) submitted by the state of Missouri for the purpose of fulfilling the requirements set forth in EPA's Transportation Conformity rule. The SIPs were submitted by the state to satisfy the Federal requirements in 40 CFR 51.396.

**DATES:** This action is effective April 29, 1996 unless by April 1, 1996 adverse or critical comments are received.

**ADDRESSES:** Copies of the documents relevant to this action are available for public inspection during normal business hours at the: Environmental Protection Agency, Air Branch, 726 Minnesota Avenue, Kansas City, Kansas 66101; and EPA Air & Radiation Docket and Information Center, 401 M Street, SW., Washington, DC 20460.

**FOR FURTHER INFORMATION CONTACT:** Lisa V. Haugen at (913) 551–7877.

**SUPPLEMENTARY INFORMATION:**

I. Background

Section 176(c)(4) of the Clean Air Act, as amended (CAA), requires the EPA to promulgate criteria and procedures for demonstrating and ensuring conformity of Federal actions to an applicable implementation plan developed pursuant to section 110 and part D of the CAA. Conformity to an implementation plan is defined by the CAA as conformity to an implementation plan's purpose of eliminating or reducing the severity and number of violations of the National Ambient Air Quality Standards, and achieving expeditious attainment of such standards. On November 23, 1993, the EPA promulgated the final rule (hereafter referred to as the Transportation Conformity rule), which established the process by which the Federal Highway Administration (FHWA), the Federal Transit Administration (FTA), and metropolitan planning organizations (MPO) determine conformity of highway and transit projects.

The Transportation Conformity rule also establishes the criteria for EPA approval of SIPs. See 40 CFR § 51.396. These criteria provide that the state provisions must be at least as stringent as the requirements specified in EPA's Transportation Conformity rule, and that they can be more stringent only if they apply equally to nonfederally funded transportation projects as well as those using Federal funds (section 51.396(a)).

The St. Louis area was designated nonattainment for ozone and carbon monoxide (CO) in 1978. On November 6, 1991, EPA promulgated a rule which classified the St. Louis area as a moderate ozone nonattainment area, and as an unclassified nonattainment area for CO. Kansas City was redesignated to attainment for ozone, and a maintenance plan was approved, in a June 23, 1992, Federal Register notice. Section 51.396 of the Transportation Conformity rule requires that states with areas subject to the rule submit an SIP revision containing the criteria and procedures for FHWA, FTA, MPOs, and other state or local agencies to assess the conformity of transportation plans, Transportation Improvement Programs (TIP), and projects to the applicable SIP, within 12 months after November 23, 1993. As the rule applies to all ozone and CO nonattainment and maintenance areas, SIP revisions for the St. Louis and Kansas City areas, addressing the requirements of the Transportation Conformity rule, became due on November 24, 1994.

II. Review of State Submittal

On February 14, 1995, the state of Missouri submitted Transportation Conformity SIP revisions for Kansas City and St. Louis. The submission included an SIP revision for Kansas City along with Missouri rule 10 CSR 10–2.390 (10–2.390), and an SIP revision, including Missouri rule 10 CSR 10–5.480 (10–5.480), which applies to St. Louis. Section 51.396 requires that, for the SIP revision to be approvable by EPA, certain sections of the Transportation Conformity rule be incorporated verbatim.

The state of Missouri chose to use the model Transportation Conformity rule developed by the State and Territorial Air Pollution Program Administrators (STAPPA)/Association of Local Air Pollution Control Officials (ALAPCO). The STAPPA/ALAPCO model rule added clarifying changes consistent with the intent of the Federal rule. For instance, 10–5.480(10)(B) and 10–2.390(10)(B) include examples of the types of planning assumptions which must be considered in making conformity determinations. The examples are added to the language in section 51.412 of the Federal rule, but do not change the section's intent. The

STAPPA/ALAPCO rule also contains ''more stringent'' and ''lateral'' options which change the substance of the Federal rule. Provisions in the STAPPA/ALAPCO rule which are more stringent than the Federal rule are identified as ''Optional More Stringent Version,'' ''Optional More Stringent Additional Provision,'' or ''Optional More Stringent and Potentially Discriminatory Versions.'' Options which address subjects not covered by the Federal Conformity rule, or which expand the coverage of the Federal rule's requirements, are identified as ''Lateral Expansion Option'' in the STAPPA/ALAPCO rule. Missouri did not adopt any of these options from the model rule. Therefore, except as noted below, EPA finds that the Missouri submissions meet the criteria set forth in section 51.396 of the Transportation Conformity rule.

On February 8, 1995, EPA published an interim final rule entitled, ''Transportation Conformity Rule Amendments: Transition to the Control Strategy Period.'' This interim final rule, which modified the language in sections 51.448 and 93.128 of the Federal rule, was effective immediately and applied until August 8, 1995. A proposed rule for these language modifications was also published February 8, 1995, and a final rule was published on August 7, 1995. Missouri rules 10 CSR 10–5.480(22) and 10–2.390(20) reflect the Federal rule requirements before the publication of the interim final rule. Specifically, the Missouri rule provides that conformity will lapse 12 months from the date of an EPA finding of specific SIP deficiencies. Therefore, EPA is approving the state's Transportation Conformity SIP revisions *with the exception of the aforementioned portions of the Missouri rules.* Section 93.128 of the Federal Transportation Conformity rule, as amended on August 7, 1995, will remain in effect until the state of Missouri submits an SIP revision which incorporates the changes in the Federal rule. Section 93.128, as amended, states that a conformity lapse resulting from a finding of certain SIP deficiencies is delayed until CAA section 179(b) highway sanctions for these deficiencies are applied.

On August 29, 1995, EPA published an interim final rulemaking amending the November 24, 1993, final Transportation Conformity rule to remove the statutory reference relating to exempting certain areas from certain $NO_X$ provisions of the Transportation Conformity rule. Specifically, the interim final rule removed the reference to $NO_X$ waivers under § 182(f) to ensure that the waivers had to be approved as part of the implementation plan revision process discussed in § 182(b) of the CAA, in order to exempt areas from the requirement to make conformity determinations for $NO_X$. Missouri rules 10 CSR 10–2.390 and 10 CSR 10–5.480 specifically reference waivers approved under § 182(f) as the statutory authority which would relieve areas from the $NO_X$ conformity requirements. In a letter dated December 7, 1995, from David Shorr, Director, Missouri Department of Natural Resources to Dennis Grams, Regional Administrator, EPA, the state of Missouri confirms its understanding that, should EPA approve an $NO_X$ waiver under § 182(f), this waiver does not relieve the state from the $NO_X$ conformity requirements in the Transportation Conformity rule. The letter further states that Missouri intends to implement its rule in a manner consistent with EPA's interim final rule, so that the conformity requirements will continue to apply until any $NO_X$ waiver request has undergone a public hearing, has been submitted to EPA, and has been subsequently approved as an SIP revision.

On November 14, 1995, the EPA promulgated a final rule which amended certain provisions of the Federal Transportation Conformity rule. These changes include allowing any transportation control measure from an approved SIP to proceed during a conformity lapse; aligning the date of conformity lapses with the date of application of the CAA highway sanctions for any failure to submit or submission of an incomplete control strategy SIP; extension of the grace period before which areas must determine conformity to a submitted control strategy SIP; establishment of a grace period before which transportation plan and program conformity must be determined in newly designated nonattainment areas; and a correction of the nitrogen oxides provisions of the Transportation Conformity rule so they are consistent with the CAA and previous commitments made by EPA. As the state adopted and submitted its Transportation Conformity rules prior to the publication of the November 14, 1995, rule amendments, and a Transportation Conformity SIP revision consistent with these amendments must be submitted to EPA by 12 months from November 14, 1995, EPA believes it is reasonable to approve the state's submittal. EPA expects Missouri to amend its conformity rules consistent with the November 1995 rule amendments and submit the amendments to EPA for approval by November 1996.

The Missouri SIP revisions, including 10–2.390 and 10–5.480, were adopted by the Missouri Air Conservation Commission, after proper notice and public hearing, on January 12, 1995, and became effective on May 28, 1995. These rules apply in all nonattainment and maintenance areas for transportation-related criteria pollutants for which the area is designated nonattainment, or has a maintenance plan as required by sections 51.394 and 93.102 of the Transportation Conformity rule.

Because the Missouri rules meet the substantive requirements of EPA's Transportation Conformity rule, EPA has determined that these submissions meet the requirements for an approvable Transportation Conformity SIP.

## III. Specific Language Changes

The Missouri Transportation Conformity rules include changes which clarify the text of the Federal rule, as explained below. Other changes reflect guidance issued by EPA in the Preamble of the final Transportation Conformity rule.

A. The preamble to the November 1993 Transportation Conformity rule states that there must be consistency between the SIP and the conformity analysis regarding modeling parameters such as temperature, season, etc. This regulatory requirement is incorrectly stated only in sections 51.452(b)(5) and 93.130(b)(5), which apply to serious, severe, and extreme ozone nonattainment areas and serious carbon monoxide areas after January 1, 1995. In an October 14, 1994, EPA memorandum, it is indicated that it was EPA's intent for this requirement to apply to all areas. This memorandum also cited an incorrect reference in sections 51.452(c)(1) and 93.130(c)(1) to paragraph (a) of the same section. The reference should have been to paragraph (b). The corrections are made in 10–2.390(24)(A)6., 10–2.390(24)(C)1., 10–5.480(26)(A)6., and 10–5.480(26)(C)1. of the Missouri rules.

B. Sections 51.458 and 93.133 require the Transportation Conformity SIP revisions to provide that written commitments to mitigation measures must be obtained prior to a positive conformity determination, and that project sponsors must comply with such commitments. The Missouri rules modify this language to make it appropriate for the state rules in 10–2.390(26)(C) and 10–5.480(29)(C).

C. In part IV(L)(1) of the Preamble to the final Transportation Conformity

rule, EPA stated that Transportation Conformity SIPs should specify what action by an affected recipient of funds designated under Title 23 U.S.C. or the Federal Transit Act, constitutes adoption or approval of a nonfederal transportation project for inclusion in a regional emissions analysis. ''Adoption and approval'' are defined in 10–2.390(5)(C)4.C. and 10–5.480(5)(C)3.D.

D. Part IV(F)(1) of the Preamble to the final Transportation Conformity rule discusses the ''timely implementation'' of transportation control measures as being a criteria for a conformity determination. Specifically, EPA uses the term ''maximum priority.'' 10–2.390(13)(C) and 10–5.480(13)(C) add language which clarifies the term ''maximum priority.''

IV. Consultation

Section 51.402 (93.105) requires the state to include procedures for interagency consultation and resolution of conflicts in the Transportation Conformity SIPs. The SIPs are to provide ''well-defined consultation procedures whereby representatives of the MPOs, state and local air quality planning agencies, state and local transportation agencies * * * must consult with each other and with local or regional offices of EPA, FHWA, and FTA on the development of the implementation plan, the TIP, and associated conformity determinations.'' Both 10–2.390(5) and 10–5.480(5) establish consultation procedures which meet EPA's consultation criteria.

Both St. Louis and Kansas City are bistate areas. 10–2.390(5) and 10–5.480(5) establish the consultation, conflict resolution and public participation procedures for conformity determinations, SIPs, transportation plans, and TIPs, and clearly state the agencies that will be involved in the consultation process in Kansas and Missouri for the Kansas City area, and in Illinois and Missouri for the St. Louis area. The roles and responsibilities of each agency are outlined in detail.

The consultation process established in 10–2.390(5) and 10–5.480(5) incorporate the basic principle behind sections 51.402 and 93.105 in the Federal Transportation Conformity rule. Missouri has established a mechanism by which every agency with any responsibility for any key transportation or air quality decision must consult with every other agency with an interest in that decision. Each interested party is provided with all the necessary information needed for meaningful input and, prior to taking any action, the views of the party are considered and responded to in a substantive manner. The reader is referred to the Technical Support Document for information on specific processes within the interagency consultation procedures, including conflict resolution procedures and the public participation process. EPA has determined that sections 10–2.390(5) and 10–5.480(5) meet the requirements of 52.402 and 93.105 of the Federal Transportation Conformity rule.

*EPA Action:* The effect of this action is that EPA grants full approval of Missouri's February 14, 1995, submittals. These SIP revisions meet the requirements set forth in 40 CFR § 51.396. As explained above, Missouri will be required to revise its rules consistent with revisions promulgated by EPA subsequent to Missouri's adoption of its rules.

The EPA is publishing this action without prior proposal because the Agency views this as a noncontroversial amendment and anticipates no adverse comments. However, in a separate document in the Federal Register publication, the EPA is proposing to approve the SIP revision should adverse or critical comments be filed.

If the EPA receives such comments, this action will be withdrawn before the effective date by publishing a subsequent notice that will withdraw the final action. All public comments received will then be addressed in a subsequent final rule based on this action serving as a proposed rule. The EPA will not institute a second comment period on this action. Any parties interested in commenting on this action should do so at this time.

Nothing in this action should be construed as permitting or allowing or establishing a precedent for any future request for revision to any SIP. Each request for revision to the SIP shall be considered separately in light of specific technical, economic, and environmental factors, and in relation to relevant statutory and regulatory requirements.

Under the Regulatory Flexibility Act, 5 U.S.C. § 600 et seq., EPA must prepare a regulatory flexibility analysis assessing the impact of any proposed or final rule on small entities (5 U.S.C. §§ 603 and 604). Alternatively, EPA may certify that the rule will not have a significant impact on a substantial number of small entities. Small entities include small businesses, small not-for-profit enterprises, and government entities with jurisdiction over populations of less than 50,000.

SIP approvals under section 110 and subchapter I, part D of the CAA do not create any new requirements, but simply approve requirements that the state is already imposing. Therefore, because the Federal SIP approval does not impose any new requirements, EPA certifies that it does not have a significant impact on any small entities affected. Moreover, due to the nature of the Federal-state relationship under the CAA, preparation of a regulatory flexibility analysis would constitute Federal inquiry into the economic reasonableness of state action. The CAA forbids EPA to base its actions concerning SIPs on such grounds (*Union Electric Co.* v. *U.S. E.P.A.*, 427 U.S. 246, 256–66 (S.Ct. 1976); 42 U.S.C. 7410(a)(2)).

This action has been classified as a Table 3 action for signature by the Regional Administrator under the procedures published in the Federal Register on January 19, 1989 (54 FR 2214–2225), as revised by a July 10, 1995, memorandum from Mary Nichols, Assistant Administrator for Air and Radiation. The Office of Management and Budget (OMB) has exempted this regulatory action from E.O. 12866 review.

*Unfunded Mandates*

Under sections 202, 203, and 205 of the Unfunded Mandates Reform Act of 1995 (''Unfunded Mandates Act''), signed into law on March 22, 1995, EPA must undertake various actions in association with proposed or final rules that include a Federal mandate that may result in estimated costs of $100 million or more to the private sector, or to state, local, or tribal governments in the aggregate.

Through submission of this state implementation plan, the state has elected to adopt the program provided for under section 110 of the CAA. These rules may bind state and local governments to perform certain actions and also require the private sector to perform certain duties. To the extent that the rules being finalized for approval by this action will impose new requirements, sources are already subject to these regulations under state law. Accordingly, no additional costs to state or local governments, or to the private sector, result from this final action. EPA has also determined that this final action does not include a mandate that may result in estimated costs of $100 million or more to state or local governments in the aggregate or to the private sector. EPA has determined that these rules result in no additional costs to tribal government.

Under section 307(b)(1) of the CAA, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by April 29, 1996. Filing a petition for reconsideration by the

Administrator of this final rule does not affect the finality of this rule for the purposes of judicial review, nor does it extend the time within which a petition for judicial review may be filed, and shall not postpone the effectiveness of such rule or action. This action may not be challenged later in proceedings to enforce its requirements. (See section 307(b)(2).)

List of Subjects in 40 CFR Part 52

Environmental protection, Air pollution control, Carbon monoxide, Incorporation by reference, Intergovernmental relations, Ozone, Reporting and record keeping requirements, Volatile organic compounds.

Dated: February 6, 1996.

Dennis Grams,

*Regional Administrator.*

Part 52, chapter I, title 40 of the Code of Federal Regulations is amended as follows:

## PART 52—[AMENDED]

1. The authority citation for part 52 continues to read as follows:

Authority: 42 U.S.C. 7401–7671q.

### Subpart AA—Missouri

2. Section 52.1320 is amended by adding paragraph (c)(92) to read as follows:

**§ 52.1320 Identification of plan.**

* * * * *

(c) * * *

(92) On February 14, 1995, the Missouri Department of Natural Resources submitted two new rules which pertain to transportation conformity in Kansas City and St. Louis.

(i) Incorporation by reference.

(A) New rule 10 CSR 10–2.390 (except section (20) Criteria and Procedures: Interim Period Reductions in Ozone Areas (TIP)) and 10 CSR 10–5.480 (except section (22) Criteria and Procedures: Interim Period Reductions in Ozone Areas (TIP)), both entitled Conformity to State Implementation Plans of Transportation Plans, Programs, and Projects Developed, Funded, or Approved Under Title 23 U.S.C. or the Federal Transit Act, effective May 28, 1995.

(ii) Additional material.

(A) Missouri's Air Pollution Control Plan, St. Louis Metropolitan Area Ozone and Carbon Monoxide Transportation Conformity, January 12, 1995.

(B) Missouri's Air Pollution Control Plan, Kansas City Metropolitan Area Ozone Transportation Conformity, January 12, 1995.

(C) Policy agreement, entered into between the Missouri Department of Natural Resources, the Mid-America Regional Council, and the Highway and Transportation Commission of the state of Missouri, dated August 31, 1993.

(D) Letter from the state of Missouri to EPA, dated December 7, 1995, in which the state commits to implementing its state rule consistent with the Federal Transportation Conformity rule, as amended on August 29, 1995, with regards to the granting of an $NO_x$ waiver and the $NO_x$ conformity requirements.

[FR Doc. 96–4565 Filed 2–28–96; 8:45 am]

BILLING CODE 6560–50–P

## 40 CFR Part 52

**[OAQPS 6542; FRL–5426–8]**

## Approval and Promulgation of Implementation Plans; State of Missouri

**AGENCY:** Environmental Protection Agency (EPA).

**ACTION:** Final rule.

**SUMMARY:** The purpose of this revision to the Missouri State Implementation Plan (SIP) is to revise the Missouri Part D new source review (NSR) rules, update and add numerous definitions, revise the maximum allowable increase for particulate matter under the requirements for prevention of significant deterioration (PSD) of air quality, address emission statements under Title I of the Clean Air Act Amendments (CAAA), and generally enhance the SIP.

The objective of this final rule is to approve into the Missouri SIP rules adopted by the state which meet the requirements of the Clean Air Act (CAA) as amended in 1990 with regard to NSR in areas that have not attained the national ambient air quality standard. This implementation plan revision was submitted by the state pursuant to Federal requirements for an approvable NSR SIP for Missouri.

**EFFECTIVE DATE:** This rule will be effective on April 1, 1996.

**ADDRESSES:** Copies of the documents relevant to this action are available for public inspection during normal business hours at the EPA Air, RCRA, and Toxics Division, 726 Minnesota Avenue, Kansas City, Kansas 66101; and at the EPA Air and Radiation docket and Information Center, 401 M Street, S.W., Washington, DC 20460.

**FOR FURTHER INFORMATION CONTACT:** Josh Tapp at (913) 551–7606.

**SUPPLEMENTARY INFORMATION:**

I. Background

On April 3, 1995, at 60 FR 16824 the EPA proposed to approve the SIP revision by the state of Missouri that revises the Missouri Part D NSR rules, updates and adds numerous definitions, revises the maximum allowable increase for particulate matter under the requirements for PSD of air quality, addresses emission statements under Title I of the CAAA, and generally enhances the SIP.

The Federal Register proposal provided that the final rule was contingent upon Missouri modifying the language in its definition of the term ''construction'' to prohibit major sources from commencing construction before a permit had been issued. The proposal also required the construction permit rule be modified to prohibit the taking of offset credits for emission reductions required under either Federal law or a Federally enforceable permit.

The EPA is currently developing a proposed rule to assist the implementation of the changes under the amended Act in the NSR provisions in Parts C and D of Title I of the Act. EPA will refer to the proposed rule as the most authoritative guidance available regarding the approvability of submittals. Upon promulgation of the final regulations, EPA will review the NSR SIPs of all states to determine whether additional SIP revisions are necessary.

II. Construction Permits Required—10 CSR 10–6.060

*A. General Nonattainment NSR Nonattainment Permit Requirements*

In the April 3, 1995, proposal to approve the SIP revision by the state of Missouri that revises the Missouri Part D NSR rules, 11 CAA requirements were addressed in detail. These requirements consist of the following and are discussed at 60 FR 16825–6: (1) Offset ratios, (2) geographical location of offsets, (3) timing of offsets, (4) actual emissions reductions, (5) $NO_X$ requirements, (6) creditable reductions, (7) prohibition on old growth allowances, (8) analysis of alternatives, (9) reasonable further progress, (10) reasonably available control technology/best available control technology/lowest achievable emission rate clearinghouse information, and (11) stationary source definition. Each of these requirements has been thoroughly addressed in the proposal and the reader is referred to that document for further discussion. Missouri has satisfied each of these Federal requirements.

*B. Missouri Construction Permit Program Corrections*

1. Particulate Matter

After the December 1993 rule adoption by the Missouri Air Conservation Commission (MACC), the Class I variance table found at 10 CSR 10–6.060(12)(H)2 did not reflect the revised $PM_{10}$ numerical maximum allowable increases as set forth at 40 FR § 51.166(p)(4). In the April 3, 1995, proposal, EPA identified this omission as a correction to be made prior to EPA's final action to approve the rule. With the March 30, 1995, MACC rule adoption, the table at 10 CSR 10–6.060(12)(H)2 now includes $PM_{10}$ as a pollutant with numerical values at least as stringent as those found at 40 CFR § 51.166(p)(4). Missouri's rule now satisfies the $PM_{10}$ requirement.

2. Waiver Policy

Before the March 30, 1995, MACC rule adoption, the Missouri Construction Permits Required rule, 10 CSR 10–6.060, in conjunction with the definition of ''construction'' at 10 CSR 10–6.020(2)(C)22, could be interpreted as allowing major sources to commence construction without a permit in contravention of CAA and EPA regulations. That definition of ''construction'' allowed for synthetic minor sources, those that are major in reality but which seek Federally enforceable limitations to limit their potential to emit, to submit a waiver request to the Missouri Department of Natural Resources (MDNR) allowing the source to commence limited and specified construction activities. In the April 3, 1995, proposal, EPA stated that the waiver provision must be omitted before the rule could be approved. The recently adopted definition of ''construction'' at 10 CSR 10–6.020(2)(C)22 deletes the reference to authorization to construct if the applicant submits a signed waiver. This current definition of ''construction'' is approvable into the SIP.

3. Offset Credits

At the time the proposed rulemaking (60 FR 16824, April 3, 1995) was published in the Federal Register, the Missouri construction rule, 10 CSR 10–6.060, lacked a prohibition on taking offset credits for emission reductions which are required by Federal law or a Federally enforceable permit. The proposal identified this omission as a change to be made before EPA could approve the rule. The language at 10 CSR 10–6.060(12)(C)4 has been modified by Missouri to include that prohibition. As regards offset credits, the Missouri rule now satisfies this requirement and is approvable into the SIP.

*C. Commenced Construction*

Under the applicablity provisions of 10 CSR 10–6.060(1)(C), no owner or operator shall commence construction or modification of any installation subject to the construction permits rule, unless it meets certain threshold requirements set forth in the rule and it first obtains a permit. The Missouri rules define ''commenced'' at 10 CSR 10–6.020(C)15 as ''an owner or operator has undertaken a continuous program of construction or modification or that an owner or operator has entered into a binding agreement or contractual obligation to undertake and complete within a reasonable time, a continuous program of construction or modification.'' When these two provisions are read together, the rules appear to prohibit a source from entering into a contractual relationship pertaining to construction before obtaining a permit. Since the Missouri provisions are at least as stringent as Federal law at 40 CFR § 51.166(i)(1), they are approvable into the SIP.

III. Update to Definitions Found in 10 CSR 10–6.020

There are many definitions which are being revised within or added to the SIP. Many of these definitions pertain to the Title V and asbestos programs. These definitions are being approved into the SIP because they provide overall consistency in the use of terms in the air program. Because many of these terms do pertain to Title V, it is important to recognize that EPA approval into the SIP of these definitions does not constitute approval with respect to the Title V submission. This approval of the definitions is only for purposes of the SIP in the context of the requirements of section 110 of the Act, and other provisions of the Act referenced in section 110. The reader is referred to the technical support document for clarification on changes to definitions and additions to the list of definitions.

IV. Confidential Information—10 CSR 10–6.210

The information set forth in the April 3, 1995, proposed rule (60 FR 16827) describes this rule and explains EPA's rationale for approval of the rule.

V. Emission Statement Rule—10 CSR 10–6.110

The information set forth in the April 3, 1995, proposed rule (60 FR 16827) describes this rule and explains EPA's rationale for approval of the rule.

EPA Action

In this document, EPA takes final action on the rulemaking to provide clarification on offset requirements; provide for the treatment of economic development zones; and require that the relative benefits of alternative sites, production processes, and control steps must be considered prior to approval of a new source permit. In addition, the rulemaking addresses corrections to Missouri's definition rule; confidential information rule; and the rule pertaining to the submission of emission data, fees, and process information.

Nothing in this action should be construed as permitting or allowing or establishing a precedent for any future request for revision to any SIP. Each request for revision to the SIP shall be considered separately in light of specific technical, economic, and environmental factors, and in relation to relevant statutory and regulatory requirements.

SIP approvals under section 110 and subchapter I, Part D of the CAA do not create any new requirements, but simply approve requirements that the state is already imposing. Therefore, because the Federal SIP approval does not impose any new requirements, EPA certifies that it does not have a significant impact on any small entities affected. Moreover, due to the nature of the Federal-state relationship under the CAA, preparation of a regulatory flexibility analysis would constitute Federal inquiry into the economic reasonableness of state action. The CAA forbids EPA to base its actions concerning SIPs on such grounds (*Union Electric Co.* v. *U.S. E.P.A.*, 427 U.S. 246, 256–66 (S.Ct. 1976); 42 U.S.C. 7410(a)(2)).

This action has been classified as a Table 3 action for signature by the Regional Administrator under the procedures published in the Federal Register on January 19, 1989 (54 FR 2214–2225), as revised by a July 10, 1995, memorandum from Mary Nichols, Assistant Administrator for Air and Radiation. The Office of Management and Budget (OMB) has exempted this regulatory action from E.O. 12866 review.

Under sections 202, 203, and 205 of the Unfunded Mandates Reform Act of 1995 (''Unfunded Mandates Act''), signed into law on March 22, 1995, EPA must undertake various actions in association with proposed or final rules that include a Federal mandate that may result in estimated costs of $100 million or more to the private sector, or to state, local, or tribal governments in the

aggregate. The Missouri revisions have no impact on tribal governments.

Through submission of this plan revision, the state has elected to adopt the program provided for under section 110 of the CAA. These rules may bind state and local governments to perform certain actions and also require the private sector to perform certain duties. To the extent that the rules being finalized for approval by this action will impose new requirements, sources are already subject to these regulations under state law. Accordingly, no additional costs to state or local governments, or to the private sector, result from this final action. EPA has also determined that this final action does not include a mandate that may result in estimated costs of $100 million or more to state or local governments in the aggregate or to the private sector.

Under section 307(b)(1) of the CAA, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by April 29, 1996. Filing a petition for reconsideration by the Administrator of this final rule does not affect the finality of this rule for the purposes of judicial review, nor does it extend the time within which a petition for judicial review may be filed, and shall not postpone the effectiveness of such rule or action. This action may not be challenged later in proceedings to enforce its requirements. (See section 307(b)(2).)

The OMB has exempted these actions from review under Executive Order 12866.

List of Subjects in 40 CFR Part 52

Environmental protection, Air pollution control, Carbon monoxide, Hydrocarbons, Incorporation by reference, Intergovernmental relations, Lead, Nitrogen dioxide, Ozone, Particulate matter, Reporting and recordkeeping requirements, Sulfur oxides, Volatile organic compounds.

Dated: December 6, 1995.

Dennis Grams,

*Regional Administrator.*

Part 52, chapter I, title 40 of the Code of Federal Regulations is amended as follows:

## PART 52—[AMENDED]

1. The authority citation for part 52 continues to read as follows:

Authority: 42 U.S.C. 7401–7671q.

## Subpart AA—[Missouri]

2. Section 52.1320 is amended by adding paragraph (c)(86) to read as follows:

**§ 52.1320 Identification of plan.**

* * * * *

(c) * * *

(86) A revision to the Missouri SIP to revise the Missouri part D NSR rules, update and add numerous definitions, revise the maximum allowable increase for particulate matter under the requirements for PSD of air quality, address emission statements under Title I of the CAA, and generally enhance the SIP.

(i) Incorporation by reference.

(A) Revision to rules 10 CSR 10–6.020, Definitions and Common Reference Tables, effective August 30, 1995; 10 CSR 10–6.060, Construction Permits Required, effective August 30, 1995; 10 CSR 10–6.110, Submission of Emission Data, Emission Fees, and Process Information, effective May 9, 1994; and 10 CSR 10–6.210, Confidential Information, effective May 9, 1994.

(ii) Additional material. None.

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[FR Doc. 96–4566 Filed 2–28–96; 8:45 am]

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## 40 CFR Part 63

**[AD–FRL–5431–2]**

**RIN 2060–AC19**

## National Emission Standards for Hazardous Air Pollutants for Source Categories: Organic Hazardous Air Pollutants From the Synthetic Organic Chemical Manufacturing Industry and Other Processes Subject to the Negotiated Regulation for Equipment Leaks

**AGENCY:** Environmental Protection Agency (EPA).

**ACTION:** Direct final rule.

**SUMMARY:** On April 10, 1995, the EPA amended certain portions of the ''National Emission Standards for Hazardous Air Pollutants for Source Categories: Organic Hazardous Air Pollutants from the Synthetic Organic Chemical Manufacturing Industry and Other Processes Subject to the Negotiated Regulation for Equipment Leaks.'' This rule is commonly known as the Hazardous Organic NESHAP or the HON. In that action, the EPA revised the rule to provide a deferral of HON requirements for source owners or operators who wish to make an area source certification and to establish minimum documentation requirements. This action revises the date for submittal of those area source certifications and clarifies the wording of the documentation requirements. This action is being taken because the EPA has learned that sufficient time was not provided to prepare the certifications and that some confusion exists regarding the required documentation.

This action also extends the April 22, 1996 deadline for submittal of implementation plans for emission points not included in an emissions average to December 31, 1996. The deadline for submitting these plans is being extended because the EPA anticipates making further revisions to the rule in the near future that could affect the contents of the implementation plan. In light of this, the EPA thinks it is appropriate to delay this report until there is greater certainty regarding the compliance requirements.

**DATES:** The direct final rule will be effective April 19, 1996, unless significant, adverse comments are received by April 1, 1996. If significant, adverse comments are timely received on any portion of the direct final rule, that portion of the direct final rule will be withdrawn.

**ADDRESSES:** Comments should be submitted (in duplicate, if possible) to: Air and Radiation Docket and Information Center (6102), Attention Docket Number A–90–20, Room M–1500, U.S. Environmental Protection Agency, 401 M Street SW., Washington, DC 20460.

**FOR FURTHER INFORMATION CONTACT:** Dr. Janet S. Meyer, Emission Standards Division (MD–13), U.S. Environmental Protection Agency, Office of Air Quality Planning and Standards, Research Triangle Park, North Carolina 27711, telephone number (919) 541–5254.

**SUPPLEMENTARY INFORMATION:** If significant adverse comments are timely received on any portion of this direct final rule, that portion of the direct final rule will be withdrawn and all such comments will be addressed in a subsequent final rule based on the proposed rule contained in the Proposed Rules Section of this Federal Register that is identical to this direct final rule. If no significant adverse comments are timely received on this direct final rule, then the direct final rule will become effective April 19, 1996, and no further action is contemplated on the parallel proposal published today.

### I. Background and Summary of Changes to Rule

On April 22, 1994 (59 FR 19402), and June 6, 1994 (59 FR 29196), the EPA promulgated in the Federal Register National Emission Standards for Hazardous Air Pollutants (NESHAP) for

the Synthetic Organic Chemical Manufacturing Industry (SOCMI), and for several other processes subject to the equipment leaks portion of the rule. These regulations were promulgated as subparts F, G, H, and I in 40 CFR Part 63, and are commonly referred to as the hazardous organic NESHAP, or the HON. Since the April 22, 1994 notice, there have been several amendments to clarify various aspects of the rule. Readers should see the following Federal Register notices for more information: September 20, 1994 (59 FR 48175); October 24, 1994 (59 FR 53359); October 28, 1994 (59 FR 54131); January 27, 1995 (60 FR 5321); April 10, 1995 (60 FR 18020); April 10, 1995 (60 FR 18026); and December 12, 1995 (60 FR 63624).

*A. Area Source Certification*

On April 10, 1995, new paragraphs were added to § 63.100(b) and § 63.103(f) of subpart F and § 63.190(b) of subpart I to provide procedures to certify and document that a source is operating below the thresholds for a major source. Those provisions specified that the certifications were to be submitted no later than May 10, 1995. This date was 30 days after the date of publication of the notice and consistent with the proposed requirement. Since the amendment was issued, the EPA has learned that there are a number of potential area source facilities whose owners learned of this amendment for the first time after May 10, 1995. The EPA believes that, in view of these circumstances, it is appropriate to provide additional time for submittal of the certifications. Therefore, this document revises the date for submittal of those certifications until May 14, 1996.

The EPA has also learned that there are questions regarding the requirements for documentation that actual emissions are below the major source threshold. To address this confusion, the first sentence in § 63.100(b)(4)(i)(B) is being revised to clarify that emissions are to be estimated for maximum expected operating conditions for the facility. This revision is necessary to make the rule consistent with the EPA's intent to allow sources with actual annual emissions less than major source thresholds the additional time necessary to obtain federally enforceable limits (59 FR 53393 and 60 FR 18021). The same revision is also being made to § 63.190(b)(7)(i)(B) of subpart I.

*B. Date for Submission of Implementation Plan*

The EPA is extending the April 22, 1996 deadline for submittal of implementation plans for emission points not included in an emissions average to December 31, 1996. The deadline for submitting these plans is being extended because there are uncertainties regarding the applicability of the rule to certain sources and there are uncertainties regarding the requirements of certain provisions. These uncertainties are caused by the existence of pending litigation on the final rule, the need to review and respond to several recent changes to the final rule, and the possibility of further changes being made to the final rule in the near future.

Since the April 22, 1994 notice, there have been several amendments to clarify various aspects of the rule. The most recent of these notices was published on December 12, 1995. On April 10, 1995 (60 FR 18071), the EPA proposed to remove three compounds from the list of chemical production processes regulated by the rule. The EPA anticipates issuing a final notice to complete that rulemaking in the near future. Additionally, the EPA anticipates that it is likely to propose at least one more set of additional changes to the rule in the near future. Since these changes may affect compliance planning for some sources, it is appropriate to delay this report until there is greater certainty regarding the compliance requirements.

II. Administrative

*A. Paperwork Reduction Act*

The information collection requirements of the previously promulgated NESHAP were submitted to and approved by the Office of Management and Budget (OMB). A copy of this Information Collection Request (ICR) document (OMB control number 1414.02) may be obtained from Sandy Farmer, Information Policy Branch (PM–223Y); U.S. Environmental Protection Agency; 401 M Street, SW; Washington, DC 20460 or by calling (202) 260–2740.

Today's changes to the NESHAP should have no impact on the information collection burden estimates made previously. The change to the area source certification merely revises the date for submission of the certification and clarifies the documentation requirements. The change to the implementation plan requirements merely extends the date for submission of plans from existing sources. These changes do not impose new requirements. Consequently, the ICR has not been revised.

*B. Executive Order 12866 Review*

Under Executive Order (E.O.) 12866, the EPA must determine whether the proposed regulatory action is ''not significant'' and therefore, subject to the Office of Management and Budget (OMB) review and the requirements of the Executive Order. The Order defines ''significant'' regulatory action as one that is likely to lead to a rule that may:

(1) Have an annual effect on the economy of $100 million or more or adversely affect in a material way the economy, a sector of the economy, productivity, competition, jobs, the environment, public health or safety in State, local, or tribal governments or communities;

(2) Create a serious inconsistency or otherwise interfere with an action taken or planned by another agency;

(3) Materially alter the budgetary impact of entitlements, grants, user fees or loan programs or the rights and obligations of recipients thereof; or

(4) Raise novel legal or policy issues arising out of legal mandates, the President's priorities, or the principles set forth in the Executive Order.

The HON rule promulgated on April 22, 1994 was considered ''significant'' under Executive Order 12866 and a regulatory impact analysis (RIA) was prepared. The amendments issued today clarify the rule and do not add any additional control requirements. Therefore, this regulatory action is considered not significant.

*C. Regulatory Flexibility Act*

The Regulatory Flexibility Act of 1980 requires the identification of potentially adverse impacts of Federal regulations upon small business entities. The Act specifically requires the completion of a Regulatory Flexibility Analysis in those instances where small business impacts are possible. Pursuant to section 605(b) of the Regulatory Flexibility Act, 5 U.S.C. 605(b), the Administrator certifies that this rule will not have a significant economic impact on a substantial number of small entities. Because this rulemaking imposes no adverse economic impacts, a Regulatory Flexibility Analysis has not been prepared.

*D. Unfunded Mandates*

Under Section 202 of the Unfunded Mandates Reform Act of 1995 (''Unfunded Mandates Act''), the EPA must prepare a budgetary impact statement to accompany any proposed or final rule that includes a Federal mandate that may result in estimated

costs to State, local, or tribal governments in the aggregate; or to the private sector, of $100 million or more. Under Section 205, the EPA must select the most cost-effective and least burdensome alternative that achieves the objectives of the rule and is consistent with statutory requirements. Section 203 requires the EPA to establish a plan for informing and advising any small governments that may be significantly or uniquely impacted by the rule.

The EPA has determined that the action promulgated today does not include a Federal mandate that may result in estimated costs of $100 million or more to either State, local, or tribal governments in the aggregate, or to the private sector. Therefore, the requirements of the Unfunded Mandates Act do not apply to this action.

List of Subjects in 40 CFR Part 63

Environmental protection, Air pollution control, Hazardous substances, Reporting and recordkeeping requirements.

Dated: February 21, 1996.

Carol M. Browner,

*Administrator.*

For the reasons set out in the preamble, title 40, chapter I, part 63, subparts F, G, and I, of the Code of Federal Regulations are amended as follows:

## PART 63—[AMENDED]

1. The authority citation for part 63 continues to read as follows:

Authority: 42 U.S.C. 7401 *et seq.*

## Subpart F—National Emission Standards for Organic Hazardous Air Pollutants From the Synthetic Organic Chemical Manufacturing Industry

2. Section 63.100 is amended by revising paragraph (b)(4) introductory text and the first sentence in paragraph (b)(4)(i)(B) to read as follows:

### § 63.100 Applicability and designation of source.

* * * * *

(b) * * *

(4) The owner or operator of a chemical manufacturing processing unit is exempt from all requirements of subparts F, G, and H of this part until not later than April 22, 1997 if the owner or operator certifies, in a notification to the appropriate EPA Regional Office, not later than May 14, 1996, that the plant site at which the chemical manufacturing processing unit is located emits, and will continue to emit, during any 12-month period, less than 10 tons per year of any individual hazardous air pollutants (HAP), and less than 25 tons per year of any combination of HAP.

(i) * * *

(B) The owner or operator shall calculate the amount of annual HAP emissions released from each emission point at the plant site, using acceptable measurement or estimating techniques for maximum expected operating conditions at the plant site. * * *

* * * * *

## Subpart G—National Emission Standards for Organic Hazardous Air Pollutants From the Synthetic Organic Chemical Manufacturing Industry for Process Vents, Storage Vessels, Transfer Operations, and Wastewater

3. Section 63.151 is amended by revising paragraph (c)(1)(ii) to read as follows:

### § 63.151 Initial notification and implementation plan.

* * * * *

(c) * * *

(1) * * *

(ii) Each owner or operator of an existing source subject to this subpart who elects to comply with § 63.112 of this subpart by complying with the provisions of §§ 63.113 to 63.148 of this subpart, rather than emissions averaging, for any emission points, and who has not submitted an operating permit application accompanied by the information specified in § 63.152(e) by December 31,1996, shall develop an Implementation Plan. For an existing source, the Implementation Plan for those emission points that are not to be included in an emissions average shall be submitted to the Administrator no later than December 31, 1996.

* * * * *

## Subpart I—National Emission Standards for Organic Hazardous Air Pollutants for Certain Processes Subject to the Negotiated Regulation for Equipment Leaks

4. Section 63.190 is amended by revising paragraph (b)(7) introductory text and the first sentence in paragraph (b)(7)(i)(B) to read as follows:

### § 63.190 Applicability and designation of source.

* * * * *

(b) * * *

(7) The owner or operator of a plant site at which a process specified in paragraphs (b)(1) through (b)(6) of this section is located is exempt from all requirements of this subpart I until not later than April 22, 1997 if the owner or operator certifies, in a notification to the appropriate EPA Regional Office, not later than May 14, 1996, that the plant site at which the process is located emits, and will continue to emit, during any 12-month period, less than 10 tons per year of any individual HAP, and less than 25 tons per year of any combination of HAP.

(i) * * *

(B) The owner or operator shall calculate the amount of annual HAP emissions released from each emission point at the plant site, using acceptable measurement or estimating techniques for maximum expected operating conditions at the plant site. * * *

* * * * *

[FR Doc. 96–4441 Filed 2–28–96; 8:45 am]

BILLING CODE 6560–50–P

## 40 CFR Part 63

**[AD–FRL–5432–3]**

## National Emission Standards for Hazardous Air Pollutants for Source Categories: Gasoline Distribution (Stage I)

**AGENCY:** Environmental Protection Agency (EPA).

**ACTION:** Final rule amendments.

**SUMMARY:** This action amends the ''National Emission Standards for Hazardous Air Pollutants for Source Categories: Gasoline Distribution (Stage I)'' (the ''Gasoline Distribution NESHAP''). These final amendments extend the initial compliance date for the equipment leak provisions applicable to existing sources to no later than December 15, 1997, and amend the date by which an existing facility must provide an initial notification to December 16, 1996 or 1 year after a facility becomes subject to the Gasoline Distribution NESHAP, whichever is later.

**DATES:** Effective Date. February 29, 1996.

*Judicial Review.* Under section 307(b)(1) of the Clean Air Act (Act), judicial review of NESHAP is available only by filing a petition for review in the U.S. Court of Appeals for the District of Columbia Circuit within 60 days of today's publication of these final amendments. Under section 307(b)(2) of the Act, the requirements that are the subject of this document may not be challenged later in civil or criminal proceedings brought by the EPA to enforce these requirements.

**ADDRESSES:** *Docket.* Docket No. A–92–38, Categories VI Reconsideration and VII Amendments, containing

information considered by the EPA in developing the final amendments, is available for public inspection and copying between 8 a.m. and 5:30 p.m., Monday through Friday, except Federal holidays, at the EPA's Air and Radiation Docket and Information Center, room M1500, U.S. Environmental Protection Agency, 401 M Street SW., Washington, DC 20460; telephone (202) 260–7548. A reasonable fee may be charged for copying. This docket also contains information considered by the EPA in proposing and promulgating the Gasoline Distribution NESHAP.

An electronic version of these final amendments and the proposal are available for download from the EPA Technology Transfer Network (TTN), a network of electronic bulletin boards developed and operated by the Office of Air Quality Planning and Standards. The TTN provides information and technology exchange in various areas of air pollution control. The service is free, except for the cost of a phone call. Dial (919) 541–5742 for data transfer of up to 14,400 bits per second. The TTN is also available on the Internet (access: TELNET ttnbbs.rtpnc.epa.gov). If more information on the operation of the TTN is needed, contact the systems operator at (919) 541–5384.

**FOR FURTHER INFORMATION CONTACT:** Mr. Stephen Shedd at telephone number (919) 541–5397 or at fax number (919) 541–3470, Emission Standards Division (MD–13), U.S. Environmental Protection Agency, Research Triangle Park, North Carolina 27711.

**SUPPLEMENTARY INFORMATION:** The information presented in this preamble is organized as follows:

I. Background and Final Amendments
A. Background
B. Summary of Amendments
II. Comments on the Proposed Amendments
A. Public Participation
B. Comments Received on the Proposed Amendments
C. Summary of Comments and EPA Responses
1. Opportunity for Comment
2. Extension of Deadline for Initial Notification
3. Extension of Initial Compliance Date for Leak Detection and Repair (LDAR)
4. Potential to Emit (PTE)
5. Risk
III. Administrative Requirements
A. Paperwork Reduction Act
B. Executive Order 12866
C. Regulatory Flexibility Act
D. Unfunded Mandates Act
E. Regulatory Review

## I. Background and Final Rule Amendments

### *A. Background*

On December 14, 1994 (59 FR 64303), the EPA promulgated the ''National Emission Standards for Hazardous Air Pollutants for Source Categories: Gasoline Distribution (Stage I)'' (the ''Gasoline Distribution NESHAP''). The Gasoline Distribution NESHAP regulates all hazardous air pollutants (HAP) emitted from new and existing bulk gasoline terminals and pipeline breakout stations that are major sources of HAP emissions or are located at sites that are major sources of HAP emissions. Among the promulgated requirements for existing sources under this rule are the requirements that sources institute an equipment leak prevention program and provide an initial notification of regulatory status no later than December 14, 1995 (40 CFR §§ 63.424(e) and 63.428(a)).

On November 7, 1995 (60 FR 56133), the EPA proposed amendments to the Gasoline Distribution NESHAP. The EPA proposed to amend the initial compliance date for the equipment leak provisions applicable to existing sources from no later than December 14, 1995 to no later than December 15, 1997, and to amend the date by which an existing facility must provide an initial notification to December 16, 1996 or 1 year after a facility becomes subject to the Gasoline Distribution NESHAP, whichever is later. Those modifications were proposed because the compliance date for these provisions was approaching and the EPA believes that, under current circumstances, additional time will allow sources a better opportunity to establish major or area source status without forgoing quantifiable emissions reductions.

On December 8, 1995 (60 FR 62991), the EPA issued a partial 3-month stay of the December 14, 1995 compliance date for equipment leak prevention provisions and providing an initial notification of regulatory status and use of a screening equation in the Gasoline Distribution NESHAP. The December 14, 1995 compliance date for leak detection and repair provisions and initial notifications was stayed for existing facilities until March 7, 1996. The EPA issued the stay pursuant to Clean Air Act section 307(d)(7)(B), 42 U.S.C. 7607(d)(7)(B), which provides the Administrator authority to stay the effectiveness of a rule during reconsideration.

### *B. Summary of Amendments*

After considering all of the comments, both for and against the proposed amendments, the EPA is promulgating these rule amendments as they were proposed. The EPA consideration and response to all the comments are contained in the next section of this document. In summary, the final amendments consist of two new compliance dates in the promulgated rule: the initial compliance date for the equipment leak provisions (§ 63.424(e)) applicable to existing sources is no later than December 15, 1997, and the date by which an existing facility must provide an initial notification (§ 63.428(a)) is December 16, 1996 or 1 year after a facility becomes subject to the Gasoline Distribution NESHAP, whichever is later. This action also clarifies that all initial notifications are to be submitted by the same time (December 16, 1996) as intended at proposal and noted in the stay. The EPA is promulgating this related clarifying amendment that extends the notification for area source facilities using an emission screening equation (§ 63.428 (i)(1) and (j)(1)) to that same date. The EPA continues to believe that, under current circumstances, this additional time is needed to allow sources a better opportunity to establish major or area source status without forgoing quantifiable emissions reductions.

## II. Comments on the Proposed Amendments

### *A. Public Participation*

These amendments were proposed in the Federal Register on November 7, 1995 (60 FR 56133). Public comments were solicited at the time of proposal. Electronic versions of the preamble and proposed regulatory amendments were made available to interested parties immediately after signature (on November 2, 1995) via the TTN bulletin board (see **ADDRESSES** section of this preamble for more TTN information).

The preamble to the proposed amendments provided the public the opportunity to request a public hearing. However, a public hearing was not requested. The public comment period for the proposed amendments was from November 7, 1995 until December 7, 1995 and the document was available to the public on the TTN even earlier, as of November 2, 1995. In all, 13 comment letters were received. The comments have been carefully considered in arriving at the final amendments being promulgated in this document.

### *B. Comments Received on the Proposed Amendments*

Comments on the proposed amendments were received from 13 commenters, consisting of oil

companies (10), trade organizations (2), and one environmental organization. Most of the commenters were in general agreement with the proposed amendments. Due to the small number of comments received, and the fact that technical issues were not involved, no background information document (BID) was prepared to present more detailed comments and responses.

However, the original comment letters have been placed in the docket, which is referred to in the **ADDRESSES** section of this preamble. For summary purposes, all of the comments have been grouped by the topic areas they address, and are discussed in the next section.

*C. Summary of Comments and EPA Responses*

As mentioned in the previous section, all but one of the commenters expressed general agreement with the proposed amendments to the Gasoline Distribution (Stage I) NESHAP. A summary of the major comments and the EPA's responses is presented below.

(1) Opportunity for Comment

One commenter considered the comment period for the proposal to be inadequate to allow most citizens to comment on the proposal, since it frequently requires a week or more for the Federal Register to arrive at public libraries, and another week or more for placement on library shelves. This leaves less than 2 weeks to research, write, edit, and mail comments. This commenter also felt that most citizens were unlikely to have learned of the opportunity to request a public hearing before the deadline for requesting such a hearing expired. However, the commenter did not request extension of the time to comment.

The EPA placed the proposal preamble and amendments on the TTN on November 2, 1995, 1 day after it was signed by the Administrator. The TTN is an electronic (computer) bulletin board, free to users, and is available on the Internet for use by the public. The usual comment period (30 days beginning with publication of the proposal in the Federal Register) and opportunity for requesting a hearing were provided at the time of proposal. No person contacted the EPA to request more time to comment. The time period was consistent with the requirements of section 307 of the Act. The EPA did not provide a longer comment period due to the relative narrowness and simplicity of the proposal and the proximity of the compliance dates. For these reasons, the EPA believes that a reasonable amount of time was afforded the public for commenting on the proposal.

(2) Extension of Deadline for Initial Notification

Twelve of the commenters expressed support for the proposed amendment to the initial notification date for existing sources. Most said that the change was essential to provide many bulk terminals and pipeline breakout stations a reasonable opportunity to calculate their potential to emit and to determine the applicability of the NESHAP. Four commenters supported the non-binding clause of the initial notification, feeling that such a clause will encourage would-be major sources to consider pollution prevention opportunities or additional controls prior to the December 15, 1997 compliance date. Commenters also pointed out that the amended notification date would not have any adverse impact on the environment. Potential negative consequences of not finalizing the amendment cited by commenters included the erroneous classification of many facilities as major sources due to the short time available to establish area source status, and the avoidance of these terminals by outside tank truck firms not wishing to incur the vapor tightness testing obligations associated with affected terminals.

The EPA is promulgating the amendment to the initial notification deadline for existing sources as it was proposed: 1 year after an affected source becomes subject to the NESHAP or by December 16, 1996, whichever is later. In addition, the clause specifying that declarations of major source status submitted by this deadline will be considered non-binding for 1 year has been retained in the final amendments. This means that facilities that include in their notification a brief description and schedule for their planned actions for achieving area source status by December 15, 1997 can make a change to their status until this latter deadline. The EPA believes that although the information in the notifications may change, it provides necessary information for tank truck companies in planning their vapor tightness testing schedules and for Federal, State, and local air pollution control agencies in planning for rule implementation and compliance activities.

(3) Extension of Initial Compliance Date for Leak Detection and Repair (LDAR)

Twelve of the commenters also supported the proposed amendment to the initial compliance date, which affects only periodic visual inspection programs for leaks from gasoline equipment components. These commenters said that the change was essential to provide many terminals and pipeline breakout stations a reasonable chance to demonstrate that they are not major sources subject to the NESHAP, and to allow time for the resolution of the potential to emit issue (see next comment topic). One commenter stated that this amendment would provide State and local agencies additional time to develop EPA-approved federally enforceable State operating permit (FESOP) programs and to complete permit processing. Another company said that EPA approvals of its 33 FESOP and 15 Title V permit actions have been very slow and the company would not be able to obtain these permits by the promulgated first compliance date of December 14, 1995. The company felt that this date extension would give them a reasonable opportunity to obtain approval of artificial limits on potential to emit from most, if not all, of the appropriate State agencies. Commenters believed that having a common compliance date for all aspects of the regulation would allow more time for facility owners and operators to consider pollution prevention opportunities or additional controls. A number of commenters pointed out that equipment leak emissions represent a minor portion of a facility's total HAP emission inventory, and most facilities already have some type of routine visual inspection program. Therefore, the proposed change would have no long-term adverse impact on human health or the environment.

One commenter, however, expressed concern that the EPA, by delaying the initial compliance date, would put citizens at risk on the basis of the already high levels of benzene and other gasoline components in the air around terminals.

The EPA has considered all of these comments, including the comment opposing the compliance date extension. The EPA continues to believe that deferral of the compliance date for the equipment leak provisions for existing sources until December 15, 1997 is the most appropriate way to allow sources a better opportunity to establish major or area source status without forgoing quantifiable emissions reductions. The EPA also agrees with commenters that equipment leak emissions are relatively small under normal operations, and so delaying compliance with the visual inspection requirement for major source facilities will not produce any significant increase in risk to exposed populations. (See the more complete discussion of risk under section (5) Risk below.)

(4) Potential to Emit (PTE)

Several commenters took issue with the EPA's policy that only federally enforceable control standards or operating limitations would be considered in determining the potential to emit of facilities and, consequently, whether they would be a major source and subject to the NESHAP. Four commenters cited a decision by the U.S. Court of Appeals for the District of Columbia Circuit ruling that the EPA's stand on the issue is unlawful, which the commenters interpreted to indicate that the policy has been vacated and is no longer in effect. One commenter stated that the EPA's insistence on maintaining its policy on this matter creates confusion on the part of facilities potentially subject to this rule. Three other commenters said that requiring federally enforceable emission controls in determinations of potential to emit inflates emission estimates, which could cause area sources to be classified as major sources required to undertake unnecessary controls and programs. Two commenters concluded that the EPA should allow permitting authorities to take into account State and local controls that the permitting authority deems effective in limiting facilities' potential to emit.

The EPA's proposal to amend the Gasoline Distribution NESHAP focused narrowly on the issue of modifying compliance dates for two provisions, the equipment leak inspection requirements and the notification of major source status, rather than the distinct issues of whether the emission screening equation and the emissions inventory methods of calculating potential to emit should be revised to reflect limitations on emissions that are not federally enforceable, and whether Federal enforceability should be a necessary criterion for determination of potential to emit under section 112 in general. Thus, comments regarding these latter two issues are outside the scope of the topics raised by the proposal. However, the EPA believes it is useful in response to these comments to summarize the impact of the court decision referenced by commenters, as well as related EPA guidance recognizing State-enforced PTE limits under section 112 during a transition period.

The EPA interpreted the impact of the referenced court decision in a January 22, 1996 guidance memorandum, which is contained in the docket and is also available on the TTN (see **ADDRESSES** section). The memorandum stated that, in *National Mining Association* v. *EPA*, 59 F.3d 1351 (D.C. Cir. 1995), the court addressed regulations under subpart A of 40 CFR part 63, the ''General Provisions'' of hazardous air pollutant programs under section 112. The court found that the EPA had not adequately explained why only federally enforceable measures should be considered as limits on a source's potential to emit. Accordingly, the court remanded the section 112 General Provisions regulation to the EPA for further proceedings. The EPA must either provide a better explanation as to why Federal enforceability promotes the effectiveness of State controls, or remove the exclusive Federal enforceability requirement. The court did not vacate the section 112 regulations; that is, the court did not declare the regulations null and void. The regulations remain in effect pending completion of new rulemaking.

The EPA plans to hold discussions with stakeholders and propose rulemaking amendments by spring 1996, and to issue final rules by spring 1997, that would address the court decisions impacting regulations promulgated pursuant to section 112 as well as other air act provisions. The EPA currently plans to address the following options, after discussions with stakeholders:

(a) An approach that would recognize ''effective'' State-enforceable limits as an alternative to federally enforceable limits on a source's potential to emit. Under this option, a source whose maximum capacity to emit without pollution controls or operational limitations exceeds relevant major source thresholds may take a State or local limit on its potential to emit. In such circumstances, the source must be able to demonstrate that the State-enforceable limits are (1) enforceable as a practical matter, and (2) being regularly complied with by the facility.

(b) An approach under which the EPA would continue to require Federal enforceability of limits on a source's potential to emit. Under this approach, in response to specific issues raised by the court in *National Mining*, the EPA would present further explanation regarding why the Federal enforceability requirement promotes effective controls. Under this approach, the EPA would propose simplifying changes to the administrative provisions of the current Federal enforceability regulations.

Any method for limiting potential to emit made available as a result of the EPA's response to the *NMA* remand will be available to sources in the Gasoline Distribution (Stage I) source category. The EPA expects to respond to the remand in *NMA* with adequate time to allow such sources to seek any new methods developed.

The EPA today reiterates that independent from the decision in *National Mining*, current EPA policy already recognizes State-enforceable PTE limits under section 112 in many circumstances under a transition policy intended to provide for orderly implementation of these new programs under the Clean Air Act Amendments of 1990. This policy is set forth in a memorandum, ''Options for Limiting the Potential to Emit (PTE) of a Stationary Source Under Section 112 and Title V of the Clean Air Act'' (January 25, 1995), and has been amended in one significant way by the January 22, 1996 guidance memorandum as noted below. (Both memoranda are contained in the docket and are also available on the TTN, see **ADDRESSES** section.)

Under the terms of the EPA's transition policy, the transition period is to end in January 1997. In addition, completion of the EPA's rulemaking in response to the recent court decisions, which the EPA anticipates will occur by early 1997, may render the transition policy unnecessary after that time. However, in conjunction with the rulemaking, the EPA will consider whether it is appropriate to extend the transition period beyond January 1997.

In recognition of the absence in some States of suitable federally enforceable mechanisms to limit PTE applicable to sources that might otherwise be subject to section 112 or Title V, the EPA's policy provides for the consideration of State-enforceable limits as a gap-filling measure during a transition period that extends until January 1997. Under this policy, for the 2-year transition period, restrictions contained in State permits issued to sources that actually emit more than 50 percent, but less than 100 percent, of a relevant major source threshold are treated by the EPA as acceptable limits on potential to emit, provided: (a) the permit and the restriction in particular are enforceable as a practical matter, and (b) the source owner submits a written certification to the EPA accepting EPA and citizen enforcement. In light of *National Mining*, the EPA believes that the certification requirement is no longer appropriate as part of this policy. Accordingly, under the January 1996 guidance, the EPA amended the January 1995 transition policy by deleting the certification requirement.

In addition, under the transition policy, sources with consistently low levels of actual emissions relative to major source thresholds can avoid major source requirements even absent any permit or other enforceable limit on PTE. Specifically, the policy provides

that sources which maintain their emissions at levels that do not exceed 50 percent of any applicable major source threshold are not treated as major sources and do not need a permit to limit PTE, so long as they maintain adequate records to demonstrate that the 50 percent level is not exceeded.

The EPA's action in this rule to extend the compliance dates for the two provisions will give more opportunities for sources to obtain potential to emit limits consistent with the EPA's guidance and hence avoid being subject to regulation as major sources.

One commenter disagreed with the EPA's interpretation that if a facility does not demonstrate area source status by the first substantive compliance date, then the facility, regardless of actual emissions or any subsequent State operating permit limitation, would be permanently classified as a major source.

The EPA's interpretation was explained in an EPA guidance memorandum from John S. Seitz, ''Potential to Emit for MACT Standards—Guidance on Timing Issues'' (May 16, 1995), which is contained in the docket (item no. VI–B–6) and is also available on the TTN (see **ADDRESSES** section). The EPA notes that the commenter viewed finalizing the proposed amendments to the compliance dates as a ''critical need * * * [to] avoid unintended inclusion of area sources.'' For the facilities in this source category, the EPA and many commenters believe that delaying the first compliance date will provide the relief being sought by the above commenters.

A number of commenters noted that the emission screening equation in the final rule cannot be used by bulk terminals because essentially all terminals handle non-gasoline products, such as diesel fuel or home heating oil, which makes them ineligible to use the equation. The commenters urged the EPA to reexamine the issue of which facilities are eligible to use the equation, pointing out that the HAP emitted from these products are ''de minimis'' and should not compel facilities to use the more cumbersome and costly emissions inventory mechanism for determining potential to emit.

As discussed in the proposal preamble, the EPA is considering data and information submitted by the API (and available in the docket) in order to evaluate a possible expansion of the screening equation to include non-gasoline products that emit HAP, and will make a final decision about changes to the equation under a separate action. The EPA is still reviewing this information and is not prepared to discuss any specific changes to the equation at this time. Depending on the results of its review of the pertinent data, the EPA may propose changes to the equation and request comment in a forthcoming and separate action in the Federal Register.

(5) Risk

One commenter opposed the proposal to delay the initial compliance date for the NESHAP on the grounds that the health risk to populations exposed to ambient HAP concentrations near terminals would be increased. The commenter expressed a belief that the language and legislative history of the Clean Air Act reflects a Congressional intent to limit public exposures to carcinogens to a level that will not produce a lifetime risk of cancer at a rate greater than one in a million. According to the commenter, a 50-year lifetime constant exposure to a gasoline vapor concentration of 0.639 part per billion (ppb) would correspond to the Act's one-in-a-million lifetime risk standard. The commenter cited a 1993 air quality study at the Paw Creek terminals in North Carolina that indicated a maximum benzene concentration of 2.2 ppb, which they claimed corresponds to a lifetime cancer risk of at least 131 per million. The commenter concluded that emission levels corresponding to such risks ought to be reduced as quickly as possible.

The EPA has not performed a risk analysis to allow the EPA to verify the risk estimation results cited by the commenter, nor did the commenter include a copy of the study with their comments. However, in accordance with sections 112 (d)(6) and (f)(2) of the Act, the Gasoline Distribution NESHAP will be reviewed within 8 years after the date of promulgation (i.e., by December 14, 2002). This review may include an assessment of residual health risk, in addition to many other aspects of the regulation. As discussed above, the proposal and this final action only extend the compliance time for instituting programs to perform visual inspections and subsequent repair of equipment components in gasoline service at terminals and pipeline breakout stations. Most facilities are already carrying out similar informal programs and, furthermore, data show that the HAP emissions from this equipment in normal operation are very low. The compliance date of December 15, 1997 promulgated in the final rule for the remaining emission sources at bulk terminals will not be affected by this action. Due to these factors, the EPA believes that this action will not substantially change the emissions near major source gasoline distribution facilities. For these reasons, the EPA is finalizing the extension of the compliance date for LDAR until December 15, 1997 as proposed on November 7, 1995.

## III. Administrative Requirements

### *A. Paperwork Reduction Act*

The information collection requirements of the previously promulgated NESHAP were submitted to and approved by the Office of Management and Budget (OMB). A copy of this Information Collection Request (ICR) document (OMB control number 2060–0325) may be obtained from Ms. Sandy Farmer, Information Policy Branch, Environmental Protection Agency, 401 M Street., S.W. (mail code 2136), Washington, DC 20460, or by calling (202) 260–2740.

Today's amendments to the Gasoline Distribution NESHAP have no impact on the information collection burden estimates made previously. No additional certifications or filings were promulgated. Therefore, the ICR has not been revised.

### *B. Executive Order 12866*

Under Executive Order 12866 (58 FR 51735, October 4, 1993), the EPA must determine whether a regulation is ''significant'' and therefore subject to OMB review and the requirements of the Executive Order. The criteria set forth in section 1 of the Order for determining whether a regulation is a significant rule are as follows:

(1) Is likely to have an annual effect on the economy of $100 million or more, or adversely and materially affect a sector of the economy, productivity, competition, jobs, the environment, public health or safety, or State, local, or tribal government communities;

(2) Is likely to create a serious inconsistency or otherwise interfere with an action taken or planned by another agency;

(3) Is likely to materially alter the budgetary impact of entitlements, grants, user fees, or loan programs or the rights and obligations of recipients thereof; or

(4) Is likely to raise novel or policy issues arising out of legal mandates, the President's priorities, or the principles set forth in the Executive Order.

The Gasoline Distribution NESHAP promulgated on December 14, 1994, was treated as a ''significant regulatory action'' within the meaning of the Executive Order. An estimate of the cost and benefits of the NESHAP was prepared at proposal as part of the

background information document (BID) and was updated in the BID for the final rule to reflect comments and changes to the final rule. The amendments issued today have no impact on the estimates in the BID. The EPA's earlier estimates of costs and emission reductions were based on the Gasoline Distribution NESHAP affecting only major sources and did not quantify the emission reductions associated with the visual equipment leak detection program; in any event, these emission reductions are small relative to the total reduction for the source category.

Pursuant to the terms of Executive Order 12866, it has been determined that this action is a ''non-significant regulatory action'' within the meaning of the Executive Order. As such, this action was not submitted to OMB for review.

*C. Regulatory Flexibility Act*

The Regulatory Flexibility Act (5 U.S.C. 601 et seq.) requires the EPA to consider potential impacts of regulations on small business entities. The Act specifically requires the preparation of a Regulatory Flexibility Analysis in those instances where small business impacts are possible. When the EPA promulgated the Gasoline Distribution NESHAP, it analyzed the potential impacts on small businesses, discussed the results of this analysis in the Federal Register, and concluded that the promulgated regulation would not result in financial impacts that significantly or differentially stress affected small companies. Since today's action imposes no additional impacts, a Regulatory Flexibility Analysis has not been prepared.

Pursuant to the provisions of 5 U.S.C. 605(b), I hereby certify that this rule will not have a significant economic impact on a substantial number of small business entities.

*D. Unfunded Mandates Act*

Under section 202 of the Unfunded Mandates Reform Act of 1995 (Unfunded Mandates Act), signed into law on March 22, 1995, the EPA must prepare a budgetary impact statement to accompany any proposed or final rule that includes a Federal mandate that may result in estimated costs to State, local, or tribal governments in the aggregate, or to the private sector, of $100 million or more. Under section 205, the EPA must select the most cost effective and least burdensome alternative that achieves the objectives of the rule and is consistent with statutory requirements. Section 203 requires the EPA to establish a plan for informing and advising any small governments that may be significantly or uniquely impacted by the rule.

The EPA has determined that today's action does not include a Federal mandate that may result in estimated costs of $100 million or more to either State, local, or tribal governments in the aggregate, or to the private sector. Therefore, the requirements of the Unfunded Mandates Act do not apply to this action.

*E. Regulatory Review*

In accordance with sections 112(d)(6) and 112(f)(2) of the Act, this regulation will be reviewed 8 years from the date of promulgation. This review may include an assessment of such factors as evaluation of the residual health risk, any overlap with other programs, the existence of alternative methods of control, enforceability, improvements in emission control technology and health data, and the recordkeeping and reporting requirements.

List of Subjects in 40 CFR Part 63

Environmental protection, Air pollution control, Hazardous substances, Petroleum bulk stations and terminals, Reporting and recordkeeping requirements.

Dated: February 23, 1996.

Carol M. Browner,

*Administrator.*

For the reasons set out in the preamble, part 63 of chapter I of title 40 of the Code of Federal Regulations is amended as follows:

## PART 63—NATIONAL EMISSION STANDARDS FOR HAZARDOUS AIR POLLUTANTS FOR SOURCE CATEGORIES

1. The authority citation for part 63 continues to read as follows:

Authority: 42 U.S.C. 7401 et seq.

2. Section 63.424 is amended by revising paragraph (e) to read as follows:

**§ 63.424 Standards: Equipment leaks.**

* * * * *

(e) Initial compliance with the requirements in paragraphs (a) through (d) of this section shall be achieved by existing sources as expeditiously as practicable, but no later than December 15, 1997. For new sources, initial compliance shall be achieved upon startup.

* * * * *

3. Section 63.428 is amended by revising paragraph (a), the first sentence of paragraph (f)(1), paragraph (i)(1), and paragraph (j)(1) to read as follows:

**§ 63.428 Reporting and recordkeeping.**

(a) The initial notifications required for existing affected sources under § 63.9(b)(2) shall be submitted by 1 year after an affected source becomes subject to the provisions of this subpart or by December 16, 1996, whichever is later. Affected sources that are major sources on December 16, 1996 and plan to be area sources by December 15, 1997 shall include in this notification a brief, non-binding description of and schedule for the action(s) that are planned to achieve area source status.

* * * * *

(f) * * *

(1) In the case of an existing source or a new source that has an initial startup date before the effective date, the report shall be submitted with the notification of compliance status required under § 63.9(h), unless an extension of compliance is granted under § 63.6(i).

* * *

* * * * *

(i) * * *

(1) Document and report to the Administrator not later than December 16, 1996 for existing facilities, within 30 days for existing facilities subject to § 63.420(c) after December 16, 1996, or at startup for new facilities the methods, procedures, and assumptions supporting the calculations for determining criteria in § 63.420(c);

* * * * *

(j) * * *

(1) Document and report to the Administrator not later than December 16, 1996 for existing facilities, within 30 days for existing facilities subject to § 63.420(d) after December 16, 1996, or at startup for new facilities the use of the emission screening equations in § 63.420(a)(1) or (b)(1) and the calculated value of $E_T$ or $E_P$;

* * * * *

4. Table 1 to subpart R is amended by revising the entry ''63.9(b)(2)'' to read as follows:

* * * * *

TABLE 1 TO SUBPART R.—GENERAL PROVISIONS APPLICABILITY TO SUBPART R

| Reference | Applies to subpart R | Comment |
|---|---|---|
| * | * | * * * * * * * |
| 63.9(b)(2) ..... | No ..... | Subpart R allows additional time for existing sources to submit initial notification. Sec. 63.428(a) specifies submittal by 1 year after being subject to the rule or December 16, 1996, whichever is later. |
| * | * | * * * * * * * |

[FR Doc. 96–4706 Filed 2–28–96; 8:45 am]
BILLING CODE 6560–50–P

## 40 CFR Part 82

**[FRL–5428–6]**

**RIN 2060–AF36**

## Protection of Stratospheric Ozone: Direct-Final Rulemaking Temporarily Extend the Existing Requirements

**AGENCY:** Environmental Protection Agency (EPA).

**ACTION:** Direct final rule.

**SUMMARY:** Through this action EPA is amending the Clean Air Act section 608 refrigerant recycling regulations to extend the effectiveness of the refrigerant purity requirements of § 82.154 (g) and (h), which are currently scheduled to expire on March 18, 1996, until December 31, 1996, or until EPA completes rulemaking to adopt revised refrigerant purity requirements based on industry guidelines, whichever comes first. EPA is extending the requirements in response to requests from the air-conditioning and refrigeration industry to avoid widespread contamination of the stock of chlorofluorocarbon (CFC) and hydrochlorofluorocarbon (HCFC) refrigerants that could result from the lapse of the purity standard. Such contamination would cause extensive damage to air-conditioning and refrigeration equipment, release of refrigerants, and refrigerant shortages with consequent price increases.

EPA anticipates, before the close of the comment period for this direct final, publishing a proposal to adopt a more flexible approach to ensuring the purity of refrigerants and soliciting public comment on this approach. EPA requests that readers of this notice review that proposal, and consider providing comments.

This temporary extension will not result in any additional burden on the regulated community. Moreover, the retention of the reclamation requirement will protect the environment, public health, and consumers by ensuring that contaminated refrigerants are not vented or charged into equipment.

**EFFECTIVE DATE:** The direct final rule will become effective on April 15, 1996 unless significant adverse comments are received by April 1, 1996. If significant adverse comments are timely received on this direct final rule, EPA will withdraw the direct final rule and timely notice to that effect will be published in the Federal Register. All comments will then be addressed in a subsequent final rule based on the proposed rule contained in the Proposed Rules section of this Federal Register that is identical to this direct final rule. If no significant adverse comments are timely received on this direct final rule then the direct final rule will become effective 45 days from today's Federal Register notice and no further action is contemplated on the parallel proposal.

**ADDRESSES:** Comments and materials supporting this rulemaking are contained in Public Docket No. A–92–01, Waterside Mall (Ground Floor) Environmental Protection Agency, 401 M Street SW., Washington, DC 20460 in room M–1500. Dockets may be inspected from 8:00 a.m. until 5:30 p.m., Monday through Friday. A reasonable fee may be charged for copying docket materials. Those wishing to notify EPA of their intent to submit adverse comments on this action should contact Cindy Newberg, Program Implementation Branch, Stratospheric Protection Division, Office of Atmospheric Programs, Office of Air and Radiation (6205–J), 401 M Street SW., Washington, DC 20460, (Docket # A–92–01 VIII.G.) (202) 233–9729.

**FOR FURTHER INFORMATION CONTACT:** Cindy Newberg, Program Implementation Branch, Stratospheric Protection Division, Office of Atmospheric Programs, Office of Air and Radiation (6205–J), 401 M Street, SW., Washington, DC 20460. The Stratospheric Ozone Information Hotline at 1–800–296–1996 can also be contacted for further information.

**SUPPLEMENTARY INFORMATION:** The contents of this preamble are listed in the following outline:

I. Overview
II. Background
III. Today's Action
IV. Effective Date
V. Summary of Supporting Analysis

### I. Overview

Paragraphs 82.154(g) and (h) of 40 CFR part 82, subpart F set requirements for sale of used refrigerant, mandating that it meet certain purity standards. These requirements will expire on March 18, 1996. EPA is currently in the process of promulgating new, more flexible, requirements based on industry guidelines, but will be unable to complete the rulemaking prior to the expiration of the existing standards. A lapse in the standards could result in widespread contamination of the stock of CFC and HCFC refrigerants. Such contamination would cause extensive damage to air-conditioning and refrigeration equipment, release of refrigerants, and refrigerant shortages with consequent price increases. Release of CFC and HCFC refrigerants has been found to deplete stratospheric ozone, resulting in increased human and environmental exposure to ultraviolet radiation. Increased exposure to ultraviolet radiation in turn can lead to serious health and environmental effects.

EPA is acting on requests from the air-conditioning and refrigeration industry to extend the effectiveness of the current refrigerant purity requirements, only until EPA can complete rulemaking to adopt more flexible requirements that will still ensure refrigerant purity.

### II. Background

On May 14, 1993, EPA published final regulations establishing a recycling program for ozone-depleting refrigerants recovered during the servicing and disposal of air-conditioning and refrigeration equipment (58 FR 28660). These regulations include evacuation requirements for appliances being serviced or disposed of, standards and testing requirements for used refrigerant sold to a new owner, certification requirements for refrigerant reclaimers, and standards and testing requirements for refrigerant recycling and recovery equipment.

When EPA promulgated the final rule, the Agency noted that further rulemaking would be required to address issues that had been raised during the comment period for the proposed rule (57 FR 58644). One of these issues was whether a standard for used refrigerant could be developed that would protect air-conditioning and refrigeration equipment, but would allow technicians to clean refrigerant themselves, rather than sending the refrigerant to an off-site reclaimer.

The final rule published on May 14, 1993, requires that refrigerant sold to a new owner be reclaimed to the ARI Standard 700 of purity by a certified reclaimer (§ 82.154(g) and (h) referencing standard in § 82.164 and the definition of reclaim found in § 82.152). As discussed in the final rule, this requirement protects the purity of used refrigerant to prevent damage to air-conditioning and refrigeration equipment from the use of contaminated refrigerant. Equipment damage from contaminated refrigerant would result in costs to equipment owners, in releases of refrigerant from damaged equipment through increased leakage, servicing and replacement, and in reduction in consumer confidence in the quality of used refrigerant. This reduction in consumer confidence could lead to the premature retirement or retrofit of CFC or HCFC equipment since consumers would no longer believe that a sufficient stock of trustworthy refrigerants was available.

Although the reclamation requirements contained in 82.154(g) and (h) would clearly protect equipment, EPA believed that a more flexible but as effective requirement should be developed, particularly for refrigerant transferred between owners whose equipment was similar and was serviced by the same contractor. However, the only existing standard at the time EPA promulgated the rule was ARI Standard 700, and the only agreed upon means of enforcing it was by limiting sale of used refrigerant to only certified reclaimers. Certified reclaimers, unlike contractors or technicians, are required to have the equipment available that can verify that the refrigerant meets the purity standards, thus ensuring its purity prior to selling the refrigerants.

In order to encourage industry to explore the possibility of developing more flexible but still effective standards and technologies for purifying refrigerant, as well as more flexible means for ensuring compliance with purity standards, EPA adopted a commenter's suggestion and established an expiration date, or ''sunset,'' for the reclamation requirement. EPA accordingly made the reclamation requirements at § 82.154 (g) and (h) effective until May 15, 1995, two years after publication of the final rule. EPA believed that this two-year period would be sufficient for industry to develop new guidelines for reuse of refrigerant and for EPA to complete a rulemaking to adopt them if EPA determined that they would continue to reduce emissions to the lowest achievable level and maximize the recapture and recycling of refrigerants (58 FR 28679).

In December, 1994, a committee representing a wide range of interests within the air-conditioning and refrigeration industry published *Industry Recycling Guide (IRG–2): Handling and Reuse of Refrigerants in the United States.* This document establishes requirements and recommendations for the reuse of refrigerant in a number of different situations, including refrigerant transfers on the open market and between equipment owned by different people but serviced by the same contractor. Because EPA believes that these requirements would protect air-conditioning and refrigeration equipment while permitting technicians, contractors, and equipment owners more flexibility than the current requirements, EPA began pursuing a rulemaking to adopt the IRG–2 requirements. However, because the original sunset date was approaching, EPA also pursued a rulemaking to extend the effectiveness of § 82.154(g) and (h) (60 FR 14608). That rulemaking extended the effectiveness of the provisions until March 18, 1996. EPA believed that this extension would provide sufficient opportunity to develop and publish a proposed rule, take public comment, and develop and publish a final rule.

EPA drafted a proposed rulemaking concerning the adoption of a more flexible approach for ensuring refrigerant purity. However, several events beyond the agency's control have delayed the EPA's ability to release this proposal. While EPA expects to publish the proposal in the Federal Register prior to the end of the comment period for this direct final rulemaking, EPA will not have an opportunity to consider comments and promulgate a final action concerning the IRG–2 requirements prior to the expiration of these provisions on March 18, 1996.

Representatives of the air-conditioning and refrigeration industry expressed concern that any lapse in refrigerant purity requirements could result in a number of problems, including sloppy handling of refrigerant and dumping of contaminated refrigerant on the market. These problems would result in significant damage to equipment, release of refrigerant, and aggravated refrigerant shortages.

Currently, the reclamation requirement encourages careful handling of refrigerant, because refrigerant that is irretrievably contaminated (for instance through mixture with other refrigerants) will not be accepted by any reclaimer, rendering it worthless. If this check is removed, sloppy handling may become widespread. This would not only lead to damage to equipment, but to the permanent loss of part of the stock of pure refrigerant through refrigerant mixture. Even in the best case in which the mixed refrigerant was properly disposed of, the limited supply of refrigerant would thereby be further reduced, necessitating more retrofit or replacement of existing equipment. Unfortunately, it is likely that the mixed refrigerant would often be used in air-conditioning and refrigeration equipment or vented rather than disposed of properly.

The possibility of widespread dumping of refrigerant on the market has been raised by reports that contractors and ''recyclers'' are stockpiling used refrigerant. In some cases, dumping dirty refrigerant on the market might be attractive simply because it enables the seller of refrigerant to avoid the costs of reclamation; for others, it might be attractive because the refrigerant is unreclaimable and therefore worthless if analyzed or sent to a reclaimer. In either situation, such dumping would lead to widespread equipment damage and potential releases of refrigerant. In addition, since domestic CFC production ceased December 31, 1995, protecting the purity of the existing stock of CFC refrigerants is essential.

## III. Today's Action

In response to these concerns, EPA is extending the effectiveness of the current reclamation requirements until the Agency can adopt replacement requirements. It was never EPA's intent to leave air-conditioning and refrigeration equipment and refrigerant supplies unprotected by a purity standard, but only to replace the existing standard with a more flexible standard when that was developed. As discussed above, EPA is currently undertaking rulemaking to adopt a more flexible standard.

IV. Summary of Supporting Analysis

*A. Executive Order 12866*

Under Executive Order 12866 (58 FR 51735, October 4, 1993), the Agency must determine whether this regulatory action is ''significant'' and therefore subject to OMB review and the requirements of the Executive Order. The Order defines ''significant'' regulatory action as one that is likely to lead to a rule that may:

(1) Have an annual effect on the economy of $100 million or more, or adversely and materially affect a sector of the economy, productivity, competition, jobs, the environment, public health or safety, or State, local, or tribal governments or communities;

(2) Create a serious inconsistency or otherwise interfere with an action taken or planned by another agency;

(3) Materially alter the budgetary impact of entitlements, grants, user fees, or loan programs or the rights and obligations of recipients thereof; or

(4) Raise novel legal or policy issues arising out of legal mandates, the President's priorities, or the principles set forth in the Executive Order.

It has been determined by OMB and EPA that this action to amend the final rule is not a ''significant regulatory action'' under the terms of Executive Order 12866 and is therefore not subject to OMB review under the Executive Order.

*B. Unfunded Mandates Act*

Section 202 of the Unfunded Mandates Reform Act of 1995 (''Unfunded Mandates Act'') requires that the Agency prepare a budgetary impact statement before promulgating a rule that includes a Federal mandate that may result in expenditure by State, local, and tribal governments, in aggregate, or by the private sector, of $100 million or more in any one year. Section 203 requires the Agency to establish a plan for obtaining input from and informing, educating, and advising any small governments that may be significantly or uniquely affected by the rule.

Under section 205 of the Unfunded Mandates Act, the Agency must identify and consider a reasonable number of regulatory alternatives before promulgating a rule for which a budgetary impact statement must be prepared. The Agency must select from those alternatives the least costly, most cost-effective, or least burdensome alternative that achieves the objectives of the rule, unless the Agency explains why this alternative is not selected or the selection of this alternative is inconsistent with law.

Because this rulemaking is estimated to result in the expenditure by State, local, and tribal governments or private sector of less than $100 million in any one year, the Agency has not prepared a budgetary impact statement or specifically addressed the selection of the least costly, most cost-effective, or least burdensome alternative. Because small governments will not be significantly or uniquely affected by this rule, the Agency is not required to develop a plan with regard to small governments. As discussed in this preamble, this rule merely extends the current reclamation requirements during consideration of a more flexible approach that may result in reducing the burden of part 82 Subpart F of the Stratospheric Protection regulations on regulated entities, including State, local, and tribal governments or private sector entities.

*C. Paperwork Reduction Act*

There are no additional information collection requirements associated with this rulemaking. EPA has determined that the Paperwork Reduction Act does not apply. The initial § 608 final rulemaking did address all recordkeeping associated with the refrigerant purity provisions. An Information Collection Request (ICR) document was prepared by EPA and approved by the Office of Management and Budget (OMB) under the Paperwork Reduction Act, 44 U.S.C. 3501 et seq. This ICR is contained in the public docket A–92–01.

*D. Regulatory Flexibility Act*

The Regulatory Flexibility Act, 5 U.S.C. 601–602, requires that Federal agencies examine the impacts of their regulations on small entities. Under 5 U.S.C. 604(a), whenever an agency is required to publish a general notice of proposed rulemaking, it must prepare and make available for public comment an initial regulatory flexibility analysis (RFA). Such an analysis is not required if the head of an agency certifies that a rule will not have a significant economic impact on a substantial number of small entities, pursuant to 5 U.S.C. 605(b).

EPA believes that since this amendment merely extends a current requirement designed to protect purity of refrigerants temporarily, there will be no adverse effects for the regulated community, including small entities. An examination of the impacts of these provisions was discussed in the initial final rule promulgated under § 608 (58 FR 28660). That final rule assessed the impact the rule may have on small entities. A separate regulatory impact analysis was developed. That impact analysis accompanied the final rule and is contained in Docket A–92–01.

I certify that this amendment to the refrigerant recycling rule will not have any additional negative economic impacts on any small entities.

List of Subjects in 40 CFR Part 82

Environmental protection, Administrative practice and procedure, Air pollution control, Chemicals, Chlorofluorocarbons, Hydrochlorofluorocarbons, Interstate commerce, Reporting and reclamation, recordkeeping requirements, refrigerant purity, recycling, Stratospheric ozone layer.

Dated: February 14, 1996.

Carol M. Browner,

*Administrator.*

Part 82, chapter I, title 40, of the Code of Federal Regulations, is amended to read as follows:

## PART 82—PROTECTION OF STRATOSPHERIC OZONE

1. The authority citation for part 82 continues to read as follows:

Authority: 42 U.S.C. 7414, 7601, 7671–7671q.

2. Section 82.154 is amended by revising paragraphs (g) and (h) to read as follows:

**§ 82.154 Prohibitions.**

* * * * *

(g) Effective until December 31, 1996, no person may sell or offer for sale for use as a refrigerant any class I or class II substance consisting wholly or in part of used refrigerant unless:

(1) The class I or class II substance has been reclaimed as defined at § 82.152;

(2) The class I or class II substance was used only in an MVAC or MVAC-like appliance and is to be used only in an MVAC or MVAC-like appliance; or

(3) The class I or class II substance is contained in an appliance that is sold or offered for sale together with the class I or class II substance.

(h) Effective until December 31, 1996, no person may sell or offer for sale for use as a refrigerant any class I or class II substance consisting wholly or in part of used refrigerant unless:

(1) The class I or class II substance has been reclaimed by a person who has been certified as a reclaimer pursuant to § 82.164;

(2) The class I or class II substance was used only in an MVAC or MVAC-like appliance and is to be used only in an MVAC or MVAC-like appliance; or

(3) The class I or class II substance is contained in an appliance that is sold or

offered for sale together with the class I or class II substance.

* * * * *

[FR Doc. 96–4038 Filed 2–28–96; 8:45 am]
BILLING CODE 6560–50–P

## 40 CFR Part 180

**[PP 4F4344/R2207; FRL–5350–7]**

**RIN 2070–AB78**

## Sethoxydim; Pesticide Tolerance

**AGENCY:** Environmental Protection Agency (EPA).

**ACTION:** Final rule.

**SUMMARY:** This document establishes a pesticide tolerance for the combined residues of the herbicide sethoxydim; 2-[1-(ethoxyimino)butyl]-5-[2-(ethylthio)propyl]-3-hydroxy-2-cyclohexene-1-one) and its metabolites containing the 2-cyclohexene-1-one moiety (calculated as the herbicide) in or on the raw agricultural commodities (RACs) corn, field, grain at 0.5 parts per million (ppm); corn, fodder at 2.5 ppm; and corn forage at 2.0 ppm. These tolerances replace current entries for field corn, grain; corn, fodder; and corn, forage. BASF Corporation requested these tolerances in a petition submitted to EPA pursuant to Federal Food, Drug, and Cosmetic Act (FFDCA).

**EFFECTIVE DATE:** February 29, 1996.

**ADDRESSES:** Written objections and hearing requests, identified by the docket control number, [PP 4F4344/R2207], may be submitted to: Hearing Clerk (1900), Environmental Protection Agency, Rm M3708, 401 M St., SW., Washington, DC 20460. Fees accompanying objections shall be labeled ''Tolerance Petition Fees'' and forwarded to EPA Headquarters Accounting Office Branch, OPP (Tolerance Fees), P.O. Box 360277M, Pittsburgh, PA 15251. A copy of any objections and hearing requests filed with the Hearing Clerk should be identified by the docket control number and submitted to: Public Response and Program Resources Branch, Field Operations Division (7506C), Office of Pesticide Programs, Environmental Protection Agency, 401 M St., SW., Washington, DC 20460. In person, bring copy of objections and hearing request to: Rm 1132, CM #2, 1921 Jefferson Davis Hwy., Arlington, VA.

A copy of objections and hearing requests filed with the Hearing Clerk may also be submitted electronically by sending electronic mail (e-mail) to: opp-docket@epamail.gov. Copies of objections and hearing request must submitted as an ACSII file avoiding the use of special characters and any firm of encryption. Copies of objections and hearing requests will also be accepted on disks in Word Perfect in 5.1 file format or ASCII file format. All copies of objections and hearing requests in electronic form must be identified by the docket number [4F4344/R2207]. No Confidential Business Information (CBI) should be submitted through e-mail. Electronic copies of objections and hearing requests on this rule may be filed online at many Federal Depository Libraries. Additional information on electronic submissions can be found below in this document.

**FOR FURTHER INFORMATION CONTACT:** By mail, Robert J. Taylor, Product Manager (PM 25), Registration Division (7505C), Office of Pesticide Programs, Environmental Protection Agency, 401 M St., SW., Washington, DC 20460. Office location, telephone number, and e-mail address: Rm. 241, CM #2, 1921 Jefferson Davis Hwy., Arlington, VA, (703) 305-6027; e-mail: taylor.robert@epamail.epa.gov.

**SUPPLEMENTARY INFORMATION:** On August 17, 1995 (60 FR 42884), EPA issued a notice in the Federal Register announcing that BASF Corporation, P.O. Box 13528, Research Triangle Park, NC 27709-3528, had submitted a pesticide petition (PP 4F4344) to EPA proposing to amend 40 CFR part 180 pursuant to section 408(d) of the Federal Food, Drug, and Cosmetic Act (FFDCA), 21 U.S.C. 346a(d), establishing regulations to permit the combined residues of the herbicide sethoxydim; 2-[1-(ethoxyimino)butyl]-5-[2-(ethylthio)propyl]-3-hydroxy-2-cyclohexene-1-one) and its metabolites containing the 2-cyclohexene-1-one moiety (calculated as the herbicide) in or on the raw agricultural commodities (RACs) corn, grain at 0.5 part per million (ppm); corn, fodder at 2.5 ppm; corn, forage at 2.0 ppm, and corn, silage at 2.0 ppm.

No comments were received in response to this notice of filing.

The petitioner subsequently amended the petition by submitting a revised section F deleting the proposed tolerance for corn silage. Because this is a deletion of a previously proposed tolerance, no longer in Table 2 of the Residue Chemistry Guidelines, there is no potential risk to humans. Therefore an additional period of public comment is not necessary.

The scientific data submitted in the petitions and other relevant material have been evaluated. The toxicological data considered in support of the proposed tolerances include:

1. Several acute toxicology studies place technical sethoxydim in acute toxicity category IV for primary eye and dermal irritation and acute toxicity category III for acute oral, dermal, and inhalation. The dermal sensitization - guinea pig study was waived because no sensitization was seen in guinea pigs dosed with the end-use product Poast (18% a.i.).

2. A 21-day dermal study with rabbits fed dosages of 0, 40, 200, and 1,000 mg/kg/day with a NOEL (no-observed adverse effect level) of greater than 1,000 mg/kg/day (limit dose).

3. A 1-year feeding study with dogs fed dosages (based on consumption) of 0, 8.86/9.41, 17.5/19.9, and 110/129 mg/kg/day (males/females) with a NOEL (no-observed effect level) of 8.86/9.41 mg/kg/day (males/ females) based on equivocal anemia in males and females at 17.5/19.9 mg/kg/day, respectively.

4. A 2-year chronic feeding/carcinogenicity study with mice fed dosages of 0, 6, 18, 54, and 162 mg/kg/day with no carcinogenic effects observed under the conditions of the study at dose levels up to and including 162 mg/kg/day (highest dose tested (HDT)) and a systemic NOEL of 18 mg/kg/day. A maximum tolerated dose (MTD) was not achieved for females in this study. A determination of the need for an additional study will be made once the replacement chronic feeding/carcinogenicity study in rats is evaluated.

5. A 2-year chronic feeding/carcinogenic study with rats fed dosages of 0, 2, 6, and 18 mg/kg/day (HDT) with no carcinogenic effects observed under the conditions of the study at dosage levels up to and including 18 mg/kg/day (HDT) and a systemic NOEL greater than or equal to 18 mg/kg/day (HDT). This study was reviewed under current guidelines and was found to be unacceptable because the doses used were insufficient to induce a toxic response and a maximum tolerated dose (MTD) was not achieved. This study must be repeated.

6. A chronic feeding/carcinogenic study with rats was submitted to supplement the above study. Rats in this study were fed dosages of 0, 18.2/23.0, and 55.9/71.8 mg/kg/day (males/females) with no carcinogenic effects observed under the conditions of the study at dose levels up to and including 55.9/71.8 mg/kg/day (HDT) (males/females) and a systemic NOEL greater than or equal to 55.9/71.8 mg/kg/day (males/females). The doses used were insufficient to induce a toxic response and failed to achieve an MTD or define a Lowest Effect Level (LEL). Slight decreases in body weights in the final

quarter of the study, although not biologically significant, can support a free standing NOEL of 55.9/71.8 mg/kg/day (males/females). A new study is necessary to replace both this study and the one discussed above.

7. A developmental toxicity study in rats fed dosages of 0, 50, 180, 650, and 1,000 11mg/kg/day with a maternal NOEL of 180 mg/kg/day and a maternal LEL of 650 mg/kg/day (irregular gait, decreased activity, excessive salivation, and anogenital staining); and a developmental NOEL of 180 mg/kg/day and a developmental LEL of 650 mg/kg/day (21-22% decrease in fetal weights, filamentous tail and lack of tail due to the absence of sacral and/or caudal vertebrae, and delayed ossification in the hyoids, vertebral centrum and/or transverse processes, sternebrae and/or metatarsals, and pubes).

8. A developmental toxicity study in rabbits fed doses of 0, 80, 160, 320, and 400 mg/kg/day with a maternal NOEL of 320 mg/kg/day and a maternal lowest observable effect level (LOEL) of 400 mg/kg/day (37% reduction in body weight gain without significant differences in group mean body weights, and decreased food consumption during dosing); and a developmental NOEL greater than 400 mg/kg/day (HDT).

9. A 2-generation reproduction study with rats fed dosage levels of 0, 150, 600, and 3,000 ppm (approximately 0, 7.5, 30, and 150 mg/kg/day) with no reproductive effects observed at 3,000 ppm (approximately 150 mg/kg/day) (HDT). However, the Agency considers this study usable for regulatory purposes and has established a free-standing NOEL of 3,000 ppm (approximately 150 mg/kg/ day).

10. Mutagenicity studies included: Ames Assays which were negative for *Salmonella typhimurium* strains TA98, TA100, TA1535, and TA 1537, with and without metabolic activity; sethoxydim did not cause structural chromosomal aberrations at doses up to 5,000 mg/kg in Chinese hamster bone marrow cells *in vivo*; a Host Mediated Assay (mouse) with *S. typhimurium* was negative at 2.5 grams/kg/day of chemical, and recombinant assays and forward mutations in *Bacillus subtilis*, *Escherichia coli*, and *S. typhimurium* were all negative at concentrations of greater than or equal to 100%; an *in vitro* Unscheduled DNA Synthesis Assay in Primary Rat Hepatocytes had a negative response for DNA repair (UDS) in primary rat hepatocyte cultures exposed up to insoluble (>101 ug/ml) and cytotoxic (507 ug/ml) doses.

11. In a rat metabolism study, excretion was extremely rapid and tissue accumulation was negligible, assuming DMSO vehicle does not affect excretion or storage of NP-55 (78% excreted into urine and 20.1% in feces).

The reference dose (RFD) based on a NOEL of 8.86 mg/kg bwt/day in the 1-year feeding study in dogs, and an uncertainty factor of 100 was calculated to be 0.09 mg/kg bwt/day. The theoretical maximum residue contribution (TMRC) for existing tolerances for the overall U. S. population is 0.032767 mg/kg bwt/day or 35% of the RfD. The current action will increase the TMRC by 0.000134 mg/kg bwt/day. These tolerances and previously established tolerances utilize a total of 37 percent of the RfD for the overall U.S. population. For U.S. subgroup populations, nonnursing infants and children aged 1 to 6, the current action and previously established tolerances utilize, respectively, a total of 63.5% and 74% of the ADI, assuming that residue levels are at the established tolerances and that 100% of the crop is treated. [These studies are also referenced in an EPA proposed rule on sethoxydim published elsewhere in this issue of the Federal Register.]

Desirable data lacking based on review of data under current guidelines include a repeat of the chronic feeding/carcinogenicity study in rats. Once the rat study is evaluated, a repeat of the mouse carcinogenicity study may be needed. Because the current studies, although unacceptable by current guidelines, provide useful information and these tolerances utilize less than 1% of the RfD, the Agency believes there is little risk from establishment of these tolerances. Any additional tolerance proposals will be considered on a case-by-case basis.

The pesticide is useful for the purposes for which these tolerances are sought and capable of achieving the intended physical or technical effect. The nature of the residue is adequately understood, and adequate analytical methods (gas chromatography using sulfur-specific flame photometric detection) are available for enforcement purposes. Previously approved versions of the analytical method are listed in the *Pesticide Analytical Manual, Volume II* (PAM II), as Method I. The analytical methods for corn grain, fodder, and forage are revisions of the above method. Because of the long lead time from establishing these tolerances until publication, the enforcement methodology for corn grain, fodder, and forage are being made available in the interim to anyone interested in pesticide enforcement when requested by mail from: Calvin Furlow, Public Response Resources Branch, Field Operations Division (7506C), Office of Pesticide Programs, Environmental Protection Agency, 401 M St., SW., Washington, DC 20460. Office location and telephone number; Rm 1130 A, CM #2, 1921 Jefferson Davis Hwy., Arlington, VA, (703) 305-6027.

There are currently no actions pending against the registration of this chemical. Any expectation of residues occurring in eggs, milk, meat, fat or meat by-products of cattle, goats, hogs, horses, and sheep or poultry will be covered by existing tolerances.

Based on the information and data considered, the Agency has determined that the tolerances established by amending 40 CFR part 180 would protect the public health. Therefore, EPA is establishing the tolerances as set forth below.

Any person adversely affected by this regulation may, within 30 days after publication of this document in the Federal Register, file written objections with the Hearing Clerk, at the address given above (40 CFR 178.20). A copy of the objections and/or hearing requests filed with the Hearing Clerk should be submitted to the OPP docket for this rulemaking. The objections submitted must specify the provisions of the regulation deemed objectionable and the grounds for the objections (40 CFR 178.25). Each objection must be accompanied by the fee prescribed by 40 CFR 180.33(i). If a hearing is requested, the objections must include a statement of the factual issue(s) on which a hearing is requested, the requestor's contentions on each such issue, and a summary of any evidence relied upon by the objector (40 CFR 178.27). A request for a hearing will be granted if the Administrator determines that the material submitted shows the following: There is a genuine and substantial issue of fact; there is a reasonable possibility that available evidence identified by the requestor would, if established, resolve one or more of such issues in favor of the requestor, taking into account uncontested claims or facts to the contrary; and resolution of the factual issue(s) in the manner sought by the requestor would be adequate to justify the action requested (40 CFR 178.32).

A record has been established for this rulemaking under docket number [PP 4F4344/R2207] (including objections and hearing requests submitted electronically as described below). A public version of this record, including printed, paper versions of electronic comments, which does not include any information claimed as CBI, is available for inspection from 8 a.m. to 4:30 pm., Monday through Friday, excluding legal

holidays. The public record is located in Room 1132 of the Public Response and Program Resources Branch, Field Operations Division (7506C), Office of Pesticide Programs, Environmental Protection Agency, Crystal Mall #2, 1921 Jefferson Davis Highway, Arlington, VA.

Written objections and hearing requests, identified by the docket control number [PP 4F4344/R2207], may be submitted to the Hearing Clerk (1900), Environmental Protection Agency, Rm 3708, 401 M St., SW., Washington, DC 20460.

A copy of electronic objections and hearing requests filed with the Hearing Clerk can be sent directly to EPA at:

opp-docket@epamail.epa.gov

A copy of electronic objections and hearing requests filed with the Hearing Clerk must be submitted as an ASCII file avoiding the use of special characters and any form of encryption.

The official record for this rulemaking, as well as the public version, as described above will be kept in paper form. Accordingly, EPA will transfer any objections and hearing requests received electronically into printed, paper form as they are received and will place the paper copies in the official rulemaking record which will also include all objections and hearing requests submitted directly in writing. The official rulemaking record is a paper record maintained at the address in ''ADDRESSES'' at the beginning of this document.

Under Executive Order 12866 (58 FR 51735, October 4, 1993), the Agency must determine whether the regulatory action is ''significant'' and therefore subject to review by the Office of Management and Budget (OMB) and the requirements of the Executive Order. Under section 3(f), the order defines a ''significant regulatory action'' as an action that is likely to result in a rule: (1) Having an annual effect on the economy of $100 million or more, or adversely and materially affecting a sector of the economy, productivity, competition, jobs, the environment, public health or safety, or State, local, or tribal governments or communities (also referred to as ''economically significant''); (2) creating serious inconsistency or otherwise interfering with an action taken or planned by another agency; (3) materially altering the budgetary impacts of entitlement, grants, user fees, or loan programs or the rights and obligation of recipients thereof; or (4) raising novel legal or policy issues arising out of legal mandates, the President's priorities, or the principles set forth in this Executive Order.

Pursuant to the terms of the Executive Order, EPA has determined that this rule is not ''significant'' and is therefore not subject to OMB review. Pursuant to the requirements of the Regulatory Flexibility Act (Pub L. 96-354, 94 Stat. 1164, 5 U.S.C. 601-612), the Administrator has determined that regulations establishing new tolerances or raising tolerance levels or establishing exemptions from tolerance requirements do not have a significant economic impact on a substantial number of small entities. A certification statement to this effect was published in the Federal Register of May 4, 1981 (46 FR 24950).

List of Subjects in 40 CFR Part 180

Environmental protection, Administrative practice and procedure, Agricultural commodities, Food additive, Pesticides and pests, Reporting and recordkeeping requirements.

Dated: February 20, 1996.

Stephen L. Johnson,

*Director, Registration Division, Office of Pesticide Programs.*

Therefore, 40 CFR part 180 is amended as follows:

## PART 180—[AMENDED]

1. The authority citation for part 180 continues to read as follows:

Authority: 21 U.S.C. 346a and 371.

2. In § 180.412(a), by revising the entries for corn, field, grain; corn fodder; and corn forage to read as follows.

**§ 180.412 2-[1-Ethoxyimino)butyl]-5-(2-ethylthio)propyl]-3-hydroxy-2-cyclohexen-1-one; tolerances for residues.**

(a) * * *

| Commodity | Parts per million |
|---|---|
| * * * * * | |
| corn, field, grain .... | 0.5 |
| corn fodder ..... | 2.5 |
| corn forage ..... | 2.0 |
| * * * * * | |

* * * * *

[FR Doc. 96–4396 Filed 2–28–96; 8:45 am]

BILLING CODE 6560–50–F

## 40 CFR Part 180

**[PP 5F4493/R2205; FRL–5351–5]**

**RIN 2070–AB78**

## Pesticide Tolerance for Glyphosate

**AGENCY:** Environmental Protection Agency (EPA).

**ACTION:** Final rule.

**SUMMARY:** This rule establishes a tolerance for residues of the herbicide glyphosate [*N*-(phosphonomethyl)glycine] in or on the raw agricultural commodity (RAC) cotton gin byproducts at 100 parts per million (ppm). Monsanto Company requested this tolerance in a petition submitted to EPA pursuant to the Federal Food, Drug, and Cosmetic Act (FFDCA).

**EFFECTIVE DATE:** These regulations become effective February 29, 1996.

**ADDRESSES:** Written objection and hearing requests, identified by the docket number, [PP 5F4493/R2205], may be submitted to: Hearing Clerk (1900), Environmental Protection Agency, Rm. M3708, 401 M St., SW., Washington, DC 20460. Fees accompanying objections shall be labeled ''Tolerance Petition Fees'' and forwarded to: EPA Headquarters Accounting Operations Branch, OPP (Tolerance Fees), P.O. Box 360277M, Pittsburgh, PA 15251. A copy of any objections and hearing request filed with the Hearing Clerk should be identified by the docket number and submitted to: Public Response and Program Resources Branch, Field Operations Division (7506C), Office of Pesticide Programs, Environmental Protection Agency, 401 M St., SW., Washington, DC 20460. In person, bring a copy of objections and hearing requests to: Rm. 1132, CM #2, 1921 Jefferson Davis Hwy., Arlington, VA 22202. A copy of objections and hearing requests filed with the Hearing Clerk may also be submitted electronically by sending electronic mail (e-mail) to: oppdocket@epamail.epa.gov.

Copies of objections and hearing requests must be submitted as an ASCII file avoiding the use of special characters and any form of encryption. Copies of objections and hearing requests will also be accepted on disks in WordPerfect 5.1 file format or ASCII file format. All copies of objections and hearing requests in electronic form must be identified by the docket number [PP 5F4493/R2205]. No Confidential Business Information (CBI) should be submitted through e-mail. Electronic copies of objections and hearing requests on this rule may be filed online

at many Federal Depository Libraries. Additional information on electronic submission can be found below in this document.

**FOR FURTHER INFORMATION CONTACT:** By mail, Robert J. Taylor, Product Manager, Registration Division (H7505C), Office of Pesticide Programs, Environmental Protection Agency, 401 M St., SW., Washington, DC 20460. Office location and telephone number: Rm. 241, CM #2, 1921 Jefferson Davis Hwy., Arlington, VA, (703)–305–6027; e-mail: taylor.robert@epamail.epa.gov.

**SUPPLEMENTARY INFORMATION:** EPA issued a notice in the Federal Register of August 17, 1995 (60 FR 42884), which announced that Monsanto Company, 700 14th Street, NW., Suite #1100, Washington, DC 20005 had submitted a petition (5F4493) proposing to amend 40 CFR part 180 pursuant to section 408 (d) of the Federal Food, Drug, and Cosmetic Act (FFDCA) 21 U.S.C. 346 (a), by establishing a regulation to permit residues of the herbicide glyphosate [*N*-(phosphonomethyl)glycine] resulting from the application of the isopropylamine salt and/or the monoammonium salt of glyphosate in or on the raw agricultural commodity (RAC) cotton gin byproducts at 100 parts per million (ppm).

There were no comments or requests for referral to an advisory committee received in response to this notice of filing.

The data submitted in the petitions and other relevant material have been evaluated. The glyphosate toxicological data listed below were considered in support of these tolerances.

1. Several acute toxicology studies placing technical-grade glyphosate in Toxicity Category III and Toxicity Category IV.

2. A 1–year feeding study with dogs fed dosage levels of 0, 20, 100, and 500 milligrams/kilogram/day (mg/kg/day) with a no-observable-effect level (NOEL) of 500 mg/kg/day.

3. A 2–year carcinogenicity study in mice fed dosage levels of 0, 150, 750, and 4,500 mg/kg/day with no carcinogenic effect at the highest dose tested (HDT) of 4,500 mg/kg/day.

4. A chronic feeding/carcinogenicity study in male and female rats fed dosage levels of 0, 3, 10, and 31 mg/kg/day (males) and 0, 3, 11, or 34 mg/kg/day (females) with no carcinogenic effects observed under the conditions of the study at dose levels up to and including 31 mg/kg/day (HDT) (males) and 34 mg/kg/day (HDT) (females) and a systemic NOEL of 31 mg/kg/day (HDT)(males) and 34 mg/kg/day (HDT) (females). Because a maximum tolerated dose (MTD) was not reached, this study was classified as supplemental for carcinogenicity.

5. A chronic feeding/carcinogenicity study in male and female rats fed dosage levels of 0, 89, 362, and 940 mg/kg/day (males) and 0, 113, 457, and 1,183 mg/kg/day (females) with no carcinogenic effects noted under the conditions of the study at dose levels up to and including 940/1,183 mg/kg/day (males/females) (HDT) and a systemic NOEL of 362 mg/kg/day (males) based on an increased incidence of cataracts and lens abnormalities, decreased urinary pH, increased liver weight and increased liver weight/brain ratio (relative liver weight) at 940 mg/kg/day (males) (HDT) and 457 mg/kg/day (females) based on decreased body weight gain 1,183 mg/kg/day (females) (HDT).

6. A developmental toxicity study in rats given doses of 0, 300, 1,000, and 3,500 mg/kg/day with a developmental NOEL of 1,000 mg/kg/day based on an increase in number of litters and fetuses with unossified sternebrae, and decrease in fetal body weight at 3,500 mg/kg/day, and a maternal NOEL of 1,000 mg/kg/day based on decrease in body weight gain, diarrhea, soft stools, breathing rattles, inactivity, red matter in the region of nose, mouth, forelimbs, or dorsal head, and deaths at 3,500 mg/kg/day (HDT).

7. A developmental toxicity study in rabbits given doses of 0, 75, 175, and 350 mg/kg/day with a developmental NOEL of 350 mg/kg/day (HDT); a maternal NOEL of 175 mg/kg/day based on increased incidence of soft stool, diarrhea, nasal discharge, and deaths at 350 mg/kg/day (HDT).

8. A multigeneration reproduction study with rats fed dosage levels of 0, 3, 10, and 30 mg/kg/day with a developmental NOEL of 10 mg/kg/day based on increased incidence of focal tubular dilation of the kidney (both unilateral and bilateral combined) of male F3b pups.

9. A two generation reproduction study with rats fed dosage levels of 0, 100, 500, and 1,500 mg/kg/day with a developmental NOEL of 500 mg/kg/day based on decreased pup body weight and body weight gain on lactation days 14 and 21 at 1,500 mg/kg/day (HDT), a systemic NOEL of 500 mg/kg/day based on soft stools in Fo and F1 males and females at 1,500 mg/kg/day (HDT) and a reproductive NOEL of 1,500 mg/kg/day (HDT).

10. Mutagenicity data included chromosomal aberration *in vitro* (no aberrations in Chinese hamster ovary cells were caused with and without S9 activation); DNA repair in rat hepatocyte; *in vivo* bone marrow cytogenic test in rats; rec-assay with *B. subtilis*; reverse mutation test with *S. typhimurium*; Ames test with *S. typhimurium*; and dominant-lethal mutagenicity test in mice (all negative).

The reference dose (RfD) based on a developmental study with rabbits (NOEL of 175 mg/kg/bwt/day) and using a hundred-fold safety factor is calculated to be 2.0 mg/kg/bwt/day. The theoretical maximum residue contribution (TMRC) for published tolerances and food and feed additive regulations is 0.02059 mg/kg/bwt/day or 1.0 percent of the RfD for the overall U.S. population. The current action on cotton gin byproducts will not increase the TMRC or percent of the RfD. Established tolerances utilize a total of 1.0 percent of the RfD for the overall U.S. population.

For U.S. subgroup populations, nonnursing infants and children 1 to 6 years of age, the current action and previously established tolerances and the food additive regulation utilize, respectively, a total of 2.4 and 2.3 percent of the RfD, assuming that residue levels are at the established tolerance levels and that 100 percent of the crop is treated.

There are no desirable data lacking for this pesticide. There are currently no actions pending against the continued registration of this pesticide. No detectable residues of *N*-nitrosoglyphosate, a contaminant of glyphosate, are expected to be present in the commodities for which tolerances are established. The carcinogenic potential of glyphosate was first considered by a panel, then called the Toxicology Branch AD Hoc Committee, in 1985. The Committee, in a consensus review dated March 4, 1985, classified glyphosate as a Group C carcinogen based on an increased incidence of renal tumors in male mice. The Committee also concluded that dose levels tested in the 26–month rat study were not adequate for assessment of glyphosate's carcinogenic potential in this species. These findings, along with additional information, including a reexamination of the kidney slides from the long-term mouse study, were referred to the FIFRA Scientific Advisory Panel (SAP). In its report dated February 24, 1986, SAP classified glyphosate as a Group D Carcinogen (inadequate animal evidence of carcinogenic potential). SAP concluded that, after adjusting for the greater survival in the high-dose mice compared to concurrent controls, that no statistically significant pairwise differences existed, although the trend was significant.

The SAP determined that the carcinogenic potential of glyphosate could not be determined from existing data and proposed that the rat and/or mouse studies be repeated in order to classify these equivocal findings. On reexamination of all information, the Agency classified glyphosate as a Group D Carcinogen and requested that the rat study be repeated and that a decision on the need for a repeat mouse study would be made upon completion of review of the rat study.

Upon receipt and review of the second rat chronic feeding/ carcinogenicity study, all toxicological findings for glyphosate were referred to the Health Effects Division Carcinogenicity Peer Review Committee on June 26, 1991, for discussion and evaluation of the weight-of-evidence on glyphosate with particular emphasis on its carcinogenic potential. The Peer Review Committee classified glyphosate as a Group E (evidence of noncarcinogenicity for humans), based upon lack of convincing carcinogenicity evidence in adequate studies in two animal species. This classification is based on the following findings: (1) None of the types of tumors observed in the studies (pancreatic islet cell adenomas in male rat, thyroid c-cell adenomas and/or carcinomas in male and female rats, hepatocellular adenomas and carcinomas in male rats, and renal tubular neoplasms in male mice) were determined to be compound related; (2) glyphosate was tested up to the limit dose on the rat and up to levels higher than the limit dose in mice; and (3) there is no evidence of genotoxicity for glyphosate. Accordingly, EPA concludes that glyphosate has not been ''found to induce cancer when ingested by man or animal.'' 21 U.S.C. 348(c)(3).

The nature of the residue in plants is adequately understood, adequate methodology (HPLC) with flurometric detection is available for enforcement purposes, and the methodology has been published in the Pesticide Analytical Manual (PAM), Vol. II. Any secondary residues occurring in the kidney and liver of cattle, goats, horses, hogs, and sheep and liver and kidney of poultry will be covered by existing tolerances. The pesticide is considered useful for the purpose for which the regulation is sought and is capable of achieving the intended physical or technical effect.

Based on the information cited above, the Agency has determined that the establishment of this tolerance by amending 40 CFR part 180 will protect the public health. Therefore, EPA is establishing this tolerance as set forth below.

Any person adversely affected by this regulation may, within 30 days after publication of this document in the Federal Register, file written objections with the Hearing Clerk, at the address given above. 40 CFR 178.20. A copy of the objections and/or hearing requests filed with the Hearing Clerk should be submitted to the OPP docket for this rulemaking. The objections submitted must specify the provisions of the regulation deemed objectionable and the grounds for the objections. 40 CFR 178.25. Each objection must be accompanied by the fee prescribed by 40 CFR 180.33(i). If a hearing is requested, the objections must include a statement of the factual issue(s) on which the hearing is requested, the requestor‘s contentions on each such issue, and a summary of any evidence relied upon by the objector. 40 CFR 178.27. A request for a hearing will be granted if the Administrator determines that the material submitted shows the following: There is a genuine and substantial issue of fact; there is a reasonable possibly that available evidence identified by the requestor would, if established, resolve one or more issues in favor of the requestor, taking into account uncontested claims or facts to the contrary; and resolution of the factual issue(s) in the manner sought by the requestor would be adequate to justify the action requested. 40 CFR 178.32.

A record has been established for this rulemaking under docket number [PP 5F4493/R2205] (including objections and hearing requests submitted electronically as described below). A public version of this record, including printed, paper versions of electronic comments, which does not include any information claimed as CBI, is available for inspection from 8 a.m. to 4.30 p.m., Monday through Friday, excluding legal holidays. The public record is located in Room 1132 of the Public Response and Program Resources Branch, Field Operations Division (7506C), Office of Pesticide Programs, Environmental Protection Agency, Crystal Mall #2, 1921 Jefferson Davis Highway, Arlington, Va.

Written objections and hearing requests, identified by the docket number [5F4493/R2205] may be submitted to the Hearing Clerk (1900), Environmental Protection Agency, Rm 3708, 401 M St. SW., Washington, DC 20460. A copy of electronic objections and hearing requests filed with the Hearing Clerk can be sent directly to EPA at:

opp-Docket@epamail.epa.gov

A copy of electronic objections and hearing requests filed with the Hearing Clerk must be submitted as an ASCII file avoiding the use of special characters and any form of encryption.

The official record for this rulemaking, as well as the public version, as described above will be kept in paper form. Accordingly, EPA will transfer any objections and hearing requests received electronically into printed, paper form as they are received and will place the paper copies in the rulemaking record which will also include all objections and hearing requests submitted directly in writing. The official record is the paper record maintained at the address in ''ADDRESSES'' at the beginning of this document.

Under Executive Order 12866 (58 FR 51735, October 4, 1993), the Agency must determine whether the regulatory action is ''significant'' and therefore subject to review by the Office of Management and Budget (OMB) and the requirements of the Executive Order. Under section 3(f), the order defines a ''significant regulatory action'' as an action that is likely to result in a rule (1) having an annual effect on the economy of $100 million or more, or adversely and materially affecting a sector of the economy, productivity, competition, jobs, the environment, public health or safety, or State, local, or tribal governments or communities (also referred to as ''economically significant''); (2) creating serious inconsistency or otherwise interfering with an action taken or planned by another agency; (3) materially altering the budgetary impacts of entitlement, grants, user fees, or loan programs or the rights and obligation of recipients thereof; or (4) raising novel legal orpolicy issues arising out of legal mandates, the President‘s priorities, or the principles set forth in this Executive Order.

Pursuant to the terms of the Executive Order, EPA has determined that this rule is not ''significant'' and is therefore not subject to ORB review.

Pursuant to the requirements of the Regulatory Flexibility Act (Pub. L. 96–354, 94 Stat. 1164, 5 U.S.C. 601–612), the Administrator has determined that regulations establishing new tolerances or raising tolerance levels or establishing exemptions from tolerance requirements do not have a significant impact on a substantial number of small entities. A certification statement to this effect was published in the Federal Register of May 4, 1981 (46 FR 24950).

List of Subjects in 40 CFR Part 180

Environmental protection, Administrative practice and procedure, Agricultural commodities, Pesticides

and pests, Reporting and recordkeeping requirements.

Dated: February 20, 1996.

Stephen L. Johnson,

*Director, Registration Division, Office of Pesticide Programs.*

Therefore, chapter I, part 180 of title 40 of the Code of Federal Regulations is amended as follows:

## PART 180—[AMENDED]

1. The authority citation for part 180 continues to read as follows:

Authority: 21 U.S.C. a and 371.

2. In § 180.364, by amending the table in paragraph (d) by alphabetically adding the raw agricultural commodity ''cotton gin byproducts'' to read as follows:

**§ 180.364 Glyphosate; tolerances for residues.**

* * * * *

(d) * * *

| Commodity | Parts per million |
|---|---|
| * * * * | * |
| Cotton gin byproducts ..... | 100.0 |
| * * * * | * |

[FR Doc. 96–4395 Filed 2–28–96; 8:45 am]

BILLING CODE 6560–50–F

## 40 CFR Part 180

**[PP 4F4405/R2206; FRL–5350–8]**

**RIN 2070–AB78**

## Nicosulfuron; Pesticide Tolerance

**AGENCY:** Environmental Protection Agency (EPA).

**ACTION:** Final rule.

**SUMMARY:** This document establishes tolerances for residues of the herbicide nicosulfuron [3-pyridinecarboxamide, 2-((((4,6-dimethoxypyrimidin-2-yl)aminocarbonyl)aminosulfonyl)-N,N-dimethyl] in or on the raw agricultural commodities (RACs) corn, sweet (kernals plus cobs with husks removed) at 0.1 part per million (ppm); corn, sweet, forage at 0.1 ppm and corn, sweet, fodder (stover) at 0.1 ppm. E.I. du Pont de Nemours and Company, Inc., requested these tolerances in a petition submitted to EPA pursuant to the Federal Food, Drug, and Cosmetic Act (FFDCA).

**EFFECTIVE DATE:** This regulation becomes effective February 29, 1996.

**ADDRESSES:** Written objections and hearing requests, identified by the document control number [PP4405/R2206], may be submitted to: Hearing Clerk (1900), Environmental Protection Agency, Rm. M3708, 401 M St., SW., Washington, DC 20460. Fees accompanying objections shall be labeled ''Tolerance Petition Fees'' and forwarded to: EPA Headquarters Accounting Operations Branch, OPP (Tolerance Fees), P.O. Box 360277M, Pittsburgh, PA 15251. A copy of any objections and hearing request filed with the Hearing Clerk should be identified by the document control number and submitted to: Public Response and Program Resources Branch, Field Operations Division (7506C), Office of Pesticide Programs, Environmental Protection Agency, 401 M St., SW., Washington, DC 20460. In person, bring copy of objections and hearing requests to: Rm 1132, CM #2, 1921 Jefferson Davis Hwy., Arlington, VA.

A copy of objections and hearing requests filed with the Hearing Clerk may also be submitted electronically by sending electronic mail (e-mail) to: opp-docket@epamail.epa.gov. Copies of objections and hearing requests must be submitted as an ASCII file avoiding the use of special characters and any form of encryption. Copies of objections and hearing requests will also be accepted on disks in WordPerfect in 5.1 file format or ASCII file format. All copies of objections and hearing requests in electronic form must be identified by the docket number [PP4F4405/R2206]. No Confidential Business Information (CBI) should be submitted through e-mail. Electronic copies of objections and hearing requests on this rule may be filed online at many Federal Depository Libraries. Additional information on electronic submissions can be found below in this document.

**FOR FURTHER INFORMATION CONTACT:** By mail, Robert J. Taylor, Product Manager (PM-25), Registration Division (7505C), Office of Pesticide Programs, Environmental Protection Agency, 401 M St., SW., Washington, DC 20460. Office location, telephone number, and e-mail address: Rm. 241, CM #2, 1921 Jefferson Davis Hwy., Arlington, VA, (703) 305-6027; e-mail: taylor.robert@epamail.epa.gov.

**SUPPLEMENTARY INFORMATION:** In the Federal Register of February 8, 1995 (60 FR 7540), EPA issued a notice announcing that Du Pont, Agricultural Products, Barley Mill, P.O. Box 80038, Wilmington, DE 19880-0038, had submitted a pesticide petition (PP4F4405) proposing to amend 40 CFR part 180 by establishing a regulation under section 408(d) of the Federal Food, Drug and Cosmetic Act (21 U.S.C. 346a(d) to permit residues of the herbicide nicosulfuron (3-pyridinecarboxamide, 2-((((4,6-dimethoxypyrimidin-2-y1) aminocarbonyl)aminosulfonyl)-N,N-dimethyl), in or on corn, sweet (kernals plus cobs with husks removed) at 0.1 part per million (ppm) and corn, sweet, forage at 0.1 ppm. There were no comments or requests for referral to an advisory committee received in response to the notice of filing.

The petitioner subsequently amended the petition by submitting a revised Section F proposing to establish tolerances for nicosulfuron in or on the RACs corn, sweet (Kernels plus cobs with Husks Removed) at 0.1 ppm; corn; sweet, forage at 0.1 ppm, and corn, sweet, fodder (stover) at 0.1 ppm. In the Federal Register of September 13, 1995 (60 FR 47578), EPA issued an amended filing notice proposing these tolerances. The Agency received one comment opposing these tolerances. The commenter's opposition to the tolerance was based upon toxicological concerns including the concept of ''NOEL'' (No observed effect level); the use of animal testing to represent human reaction to potentially toxic substances (pesticides); the indications of a link between pesticide exposure and Parkinson's Disease (PD).

The Agency has reviewed the comment and decided to proceed with these tolerances. The Agency, made the decision that a wide variety of toxicological studies would serve as the basis for determining if a pesticide could be registered and used without unreasonable risk. It is true that animal models do not and cannot predict every possible human reaction to pesticides, but the general consensus is that they offer the best information as to what a pesticide might do to humans. Usually, the Agency requires and reviews long-term studies in rodents and non-rodents to determine a dose which causes no apparent adverse effects. The NOEL is divided by an uncertainty factor - often at least 100 - to arrive at doses or exposures that should not cause harmful effects on humans. In the Agency's regulation of pesticides, the Agency does not approve uses which will cause unreasonable adverse effects to humans or the environment.

The Agency understands that the testing of one pesticide at a time does not predict all the possible adverse interactions with other pesticides - or for that matter other drugs or environmental pollutants. The Agency is exploring ways of testing for the

interactions of pesticides having similar toxicity endpoint, but progress in that area is slow.

With reference to the indications of a link between pesticide exposure and Parkinson's Disease, the Agency is aware that many researchers are investigating the potential reaction of pesticide exposures to chronic neurological diseases including Parkinson's Disease, and additional research is needed to study this important area. Available studies in humans or animals have not yet established any relationship between pesticide exposures and Parkinson's Disease.

The data submitted in the petition and other relevant material have been evaluated. The toxicology data listed below were considered in support of this tolerance.

1. Several acute toxicology studies placing the technical-grade herbicide in Toxicity Category III.

2. A 1-year feeding study with dogs fed dosages of 0, 6.25, 125, and 500 mg/kg/day resulted in a systemic NOEL of 125 mg/kg/day in males based upon a decrease in body weight gains and a concomitant increase in relative liver and kidney weights in males. The NOEL for females was 500 mg/kg/day, the highest dose tested (HDT).

3. A 2-year chronic toxicity/carcinogenicity study with rats fed dosages of 0, 1.9/2.6, 58.1/77.1, 289/382, and 786/1,098 mg/kg/day (males/females demonstrated that no carcinogenic effects were observed under the conditions of the study at dose levels up to and including 786/1,098 (males/females) mg/kg/day (HDT) and a systemic NOEL equal to or greater than 786 mg/kg/day (males) and 1,098 mg/kg/day (females), (HDT).

4. An 18-month carcinogenicity study with mice fed dosages of 0, 3.3/4.4, 32.7/44.8, 327/438, and 993/1,312 mg/kg/day (males/females) demonstrated that no carcinogenic effects were observed under the conditions of the study up to and including 993/1,312 (males/females) mg/kg/day (HDT) and a systemic NOEL of 993/1,312 (males/females) mg/kg/day (HDT).

5. A developmental toxicity study in rats fed dosages of 0, 200, 1,000, 2,500, and 6,000 mg/kg/day had a developmental and maternal NOEL equal to or greater than 6,000 mg/kg/day, (HDT).

6. A developmental toxicity study in rabbits fed dosages of 0, 100, 500, 1,000, and 2,000 mg/kg/day had a maternal NOEL of 100 mg/kg/day based upon maternal toxicity occurring at 500 mg/kg/day. Maternal toxicity was demonstrated by an increase in clinical signs, gross pathological observations, abortions, postimplantation loss and decrease in body weight gain during the dosing period. The developmental NOEL was 500 mg/kg/day based upon developmental toxicity evidenced at 1,000 mg/kg/day in the form of reduced mean fetal body weights and the apparent increase in postimplantation loss at 500 mg/kg/day and above.

7. A multi-generation reproduction study in the rat administered dosages of 0, 12.5, 287, and 1,269 mg/kg/day had a systemic NOEL of 287 mg/kg/day based upon F1 (first mating) females with a lower body weight gain during the final week of gestation and a similar pattern in the F0 females during the same period of gestation at 1,269 mg/kg/day (HDT). The reproductive NOEL was 287 mg/kg/day based on a minimal reduction of litter size at birth and in pup weights at postpartum days 14 through 21 in the F2a high-dose group at 1,269 mg/kg/day (HDT).

8. A mutagenic test with *Salmonella typhimurium* did not show mutagenicity in four test strains (TA97A, TA98, TA100, and TA1535) with or without metabolic activation; *in vitro* chromosomal aberration test in cultured human lymphocytes indicated negative response at the concentrations of 40 to 470 ug/mL; an unscheduled DNA damage assay at the concentrations of 0.04 to 470 ug/mL was negative; *in vitro* gene mutation assay in Chinese hamster ovary cells was nonmutagenic at the concentrations of 4 to 465 ug/mL with or without metabolic activation; and a micronucleus assay in mouse bone marrow had negative responses at the dose levels of 500 to 5,000 mg/kg.

The reference dose (RFD), based on a 1 year dog feeding study (NOEL of 125 mg/kg bwt/day) and using a hundred fold safety factor, is calculated to be 1.25 mg/kg bwt/day. The theoretical maximum residue contribution (TMRC) for the existing tolerances is 0.000034 mg/kg/day and utilizes 0.003% of the RFD. The current action will increase the TMRC by 0.000024 mg/kg/day. These tolerances and previously established tolerances will utilize a total of 0.005% of the RFD for the overall U.S. population. For U.S. subgroup populations nonnursing infants and children 1 to 6, the current action and previously established tolerances utilize 0.011% of the RFD, assuming that residue levels are at the established tolerances and 100% of the crop is treated.

No desirable data are lacking. The pesticide is useful for the purpose for which the tolerance is sought. Adequate analytical methodology (liquid chromatography with ultraviolet detection) is available for enforcement purposes. The method is not yet published in the Pesticide Analytical Manual (PAM), but can be obtained as follows: by mail: Calvin Furlow, Public Information Branch, Field Operations Division (H7506C), Office of Pesticide Programs, Environmental Protection Agency, 401 M St., SW., Washington, DC 20460, Office location and telephone number: Crystal Mall #2, Rm 1130A, 1921 Jefferson Davis Hwy., Arlington, VA, (703–305-5937).

There are currently no actions pending against the registration of this chemical. No secondary residues are expected to occur in poultry, meat, meat byproducts, or eggs based on the proposed use on sweet corn, since sweet corn is not fed to poultry. No secondary residues are expected to occur in milk and the meat, and meat byproducts of cattle, goats, hogs, horses and sheep.

Based on the information cited above, the Agency has determined that the establishment of the tolerances by amending 40 CFR part 180 will protect the public health; therefore, the tolerances are established as set forth below. Any person adversely affected by this regulation may, within 30 days after publication of this document in the Federal Register, file written objections with the Hearing Clerk, at the address given above, 40 CFR 178.20. A copy of the objections and/or hearing requests filed with the Hearing Clerk should be submitted to the OPP docket for this rulemaking. The objections submitted must specify the provisions of the regulation deemed objectionable and the grounds for the objections (40 CFR 178.25). Each objection must be accompanied by the fee prescribed in 40 CFR 180.33 (i). If a hearing is requested, the objections must include a statement of factual issue(s) on which a hearing is requested, the requestor's contentions on each such issue, and a summary of any evidence relied upon by the objector (40 CFR 178.27). A request for a hearing will be granted if the Administrator determines that the material submitted shows the following: There is a genuine and substantial issue of fact; there is a reasonable possibility that available evidence identified by the requestor would, if established, resolve one or more of such issues in favor of the requestor, taking into account uncontested claims or facts to the contrary; and resolution of the factual issue(s) in the manner sought by the requestor would be adequate to justify the action requested (40 CFR 178.32).

A record has been established for this rulemaking under docket number [PP 4F4405/R2206] (including objections and hearing requests submitted

electronically as described below). A public version of this record, including printed, paper versions of electronic comments, which does not include any information claimed as CBI, is available for inspection from 8 a.m. to 4:30 p.m., Monday through Friday, excluding legal holidays. The public record is located in Room 1132 of the Public Response and Program Resources Branch, Field Operations Division (7506C), Office of Pesticide Programs, Environmental Protection Agency, Crystal Mall #2, 1921 Jefferson Davis Highway, Arlington, VA.

Written objections and hearing requests, identified by the docket control number [PP 4F4405/R2206] may be submitted to the Hearing Clerk (1900), Environmental Protection Agency, Rm. 3708, 401 M St., SW., Washington, DC 20460.

A copy of electronic objections and hearing requests filed with the Hearing Clerk can be sent directly to EPA at: opp-docket@epamail.epa.gov A copy of electronic objections and hearing requests filed with the Hearing Clerk must be submitted as an ASCII file avoiding the use of special characters and any form of encryption.

The official record for this rulemaking, as well as the public version, as described above will be kept in paper form. Accordingly, EPA will transfer any objections and hearing requests received electronically into printed, paper form as they are received and will place the paper copies in the official rulemaking record which will also include all objections and hearing requests submitted directly in writing. The official rulemaking record is the paper record maintained at the address in ''ADDRESSES'' at the beginning of this document.

Under Executive Order 12866 (58 FR 51735, October 4, 1993), the Agency must determine whether the regulatory action is ''significant'' and therefore subject to review by the Office of Management and Budget (OMB) and the requirements of the Executive Order. Under section 3(f), the order defines a ''significant regulatory action'' as an action that is likely to result in a rule: (1) Having an annual effect on the economy of $100 million or more, or adversely and materially affecting a sector of the economy, productivity, competition, jobs, the environment, public health or safety, or State, local, or tribal governments or communities (also referred to as ''economically significant''); (2) creating serious inconsistency or otherwise interfering with an action taken or planned by another agency; (3) materially altering the budgetary impacts of entitlement, grants, user fees, or loan programs or the rights and obligation of recipients thereof: or (4) raising novel legal or policy issues arising out of legal mandates, the President's priorities, or the principles set forth in this Executive Order.

Pursuant to the terms of the Executive Order, EPA has determined that this rule is not ''significant'' and is therefore not subject to OMB review. Pursuant to the requirements of the Regulatory Flexibility Act (Pub. L. 96-354, 94 Stat. 1164, 21 U.S.C. 601-612), the Administrator has determined that regulations establishing new tolerance levels or establishing exemptions from tolerance requirements do not have a significant economic impact on a substantial number of small entities. A certification statement to this effect was published in the Federal Register of May 4, 1981 (46 FR 24950).

List of Subjects in 40 CFR Part 180

Environmental protection, Administrative practice and procedure, Agricultural commodities, Pesticides and pests, Reporting and recordkeeping requirements.

Dated: February 20, 1996.

Stephen L. Johnson,

*Director, Registration Division, Office of Pesticide Programs.*

Therefore, 40 CFR part 180 is amended as follows:

## PART 180—[AMENDED]

1. The authority citation for part 180 continues to read as follows:

Authority: 21 U.S.C. 346a and 371.

2. In section 180.454 by amending the table therein by adding and alphabetically inserting new entries for corn, sweet (kernals plus cobs with husks removed); corn, sweet, fodder (stover); and corn, sweet, forage; to read as follows:

**§ 180.454 Nicosulfuron, [3-pyridinecarboxamide, 2-((((4,6-dimethoxypyrimidin-2-yl)aminocarbonyl)aminosulfonyl)-N,N-dimethyl]; tolerances for residues.**

* * * * *

| Commodity | Parts per million |
|---|---|
| * * * * * | |
| corn, sweet (kernals plus cobs with husks removed) ..... | 0.1 |
| corn sweet, fodder (stover) ..... | 0.1 |
| corn, sweet, forage | 0.1 |

[FR Doc. 96–4399 Filed 2–28–96; 8:45 am]

BILLING CODE 6560–50–F

## 40 CFR Parts 180 and 186

**[PP 3F4169 and FAP 3H5655/R2200; FRL–4996–2]**

**RIN 2070–AC78**

## Imidacloprid; Pesticide Tolerances

**AGENCY:** Environmental Protection Agency (EPA).

**ACTION:** Final rule.

**SUMMARY:** EPA is establishing permanent tolerances for residues of the insecticide (1-[(6-chloro-3-pyridinyl)methyl]-*N*-nitro-2-imidazolidinimine) (also known as imidacloprid) and it metabolites in or on cottonseed and cotton gin byproducts, revoking the existing feed additive tolerance for imidacloprid on cotton meal, and establishing a maximum residue limit for imidacloprid on cottonseed meal. Bayer Corporation (formerly Miles, Inc.) submitted petitions pursuant to the Federal Food, Drug and Cosmetic Act (FFDCA) requesting these regulations to establish certain maximum permissible levels for residues of the insecticide.

**EFFECTIVE DATE:** This regulation is effective on February 15, 1996.

**ADDRESSES:** Written objections and hearing requests, identified by the document control number, [PP 3F4169 and FAP 3H5655/R2200, may be submitted to: Hearing Clerk (1900), Environmental Protection Agency, Rm. M3708, 401 M St., SW., Washington, DC 20460. A copy of any objections and hearing requests filed with the Hearing Clerk should be identified by the document control number and submitted to: Public Response and Program Resources Branch, Field Operations Division (7506C), Office of Pesticide Programs, Environmental Protection Agency, 401 M St., SW., Washington , DC 20460. In person, bring copy of objections and hearing requests to Rm. 1132, CM #2, 1921 Jefferson Davis Hwy., Arlington, VA 22202. Fees accompanying objections shall be labeled ''Tolerance Petition Fees'' and forwarded to: EPA Headquarters Accounting Operations Branch, OPP (Tolerance Fees), P.O. Box 360277M,

Pittsburgh, PA 15251. An electronic copy of objections and hearing requests filed with the Hearing Clerk may be submitted to OPP by sending electronic mail (e-mail) to:opp-docket@epamail.epa.gov. Copies of electronic objections and hearing requests must be submitted as an ASCII file avoiding the use of special characters and any form of encryption. Copies of electronic objections and hearing requests will also be accepted on disks in WordPerfect 5.1 file format or ASCII file format. All copies of electronic objections and hearing requests must be identified by the docket number [PP 3F4169 and FAP 3H5655/R2200. No Confidential Business Information (CBI) should be submitted through e-mail. Copies of electronic objections and hearing requests on this rule may be filed online at many Federal Depository Libraries. Additional information on electronic submissions can be found below in this document.

**FOR FURTHER INFORMATION CONTACT:** By mail: Dennis H. Edwards, Jr., Product Manager (PM) 19, Registration Division (7505C), Office of Pesticide Programs, Environmental Protection Agency, 401 M St., SW., Washington, DC 20460. Office location and telephone number: Rm. 207, CM #2, 1921 Jefferson Davis Hwy., Arlington, VA 22202, (703)–305–6386; email: edwards.dennis@epamail.epa.gov.

**SUPPLEMENTARY INFORMATION:** In the Federal Register of December 6, 1995, (60 FR 62366), EPA issued a proposed rule pursuant to petitions from Bayer Corporation (formerly Miles, Inc.) to section 408 of the Federal Food, Drug and Cosmetic Act (FFDCA), 21 U.S.C. 346a(e). EPA proposed permanent tolerances for residues of the insecticide (1-[(6-chloro-3-pyridinyl)methyl]-*N*-nitro-2-imidazolidinimine (also known as imidacloprid) and its metabolites in or on cottonseed and cotton gin byproduct, to revoke the existing feed additive tolerance for imidacloprid on cotton meal, and to establish a maximum residue limit for imidacloprid on cottonseed.

There were no comments or request for referral to an advisory committee received in response to the proposed rule.

This pesticide is considered useful for the purposes for which the tolerances are sought. Based on the information and data considered, the Agency has determined that the tolerances established by amending 40 CFR part 180 would protect the public health. Therefore, the tolerances are established as set forth below.

Any person adversely affected by this regulation may, within 30 days after publication of this document in the Federal Register, file written objections and/or request a hearing with the Hearing Clerk, at the address given above (40 CFR 178.20). A copy of the objections and/or hearing requests filed with the Hearing Clerk should be submitted to the OPP docket for this rulemaking. The objections submitted must specify the provisions of the regulation deemed objectionable and the grounds for the objections (40 CFR 178.25). Each objection must be accompanied by the fee prescribed by 40 CFR 180.33(i). If a hearing is requested, the objections must include a statement of the factual issue(s) on which a hearing is requested, the requestor's contentions on such issues, and a summary of any evidence relied upon by the objector (40 CFR 178.27). A request for a hearing will be granted if the Administrator determines that the material submitted shows the following: There is a genuine and substantial issue of fact; there is a reasonable possibility that available evidence identified by the requestor would, if established, resolve one or more of such issues in favor of the requestor, taking into account uncontested claims or facts to the contrary; and resolution of the factual issue(s) in the manner sought by the requestor would be adequate to justify the action requested (40 CFR 178.32).

A record has been established for this rulemaking under docket number [PP 3F4169 and FAP 3H5655/R2200] (including any objections and hearing requests submitted electronically as described below). A public version of this record, including printed, paper versions of electronic comments, which does not include any information claimed as CBI, is available for inspection from 8 a.m. to 4:30 p.m., Monday through Friday, excluding legal holidays. The public record is located in Room 1132 of the Public Response and Program Resources Branch, Field Operations Division (7506C), Office of Pesticide Programs, Environmental Protection Agency, Crystal Mall #2, 1921 Jefferson Davis Highway, Arlington, VA.

Written objections and hearing requests, identified by the document control number [PP 3F4169 and FAP 3H5655/R2200], may be submitted to the Hearing Clerk (1900), Environmental Protection Agency, Rm. 3708, 401 M St., SW., Washington, DC 20460.

A copy of electronic objections and hearing requests filed with the Hearing Clerk can be sent directly to EPA at: opp-Docket@epamail.epa.gov

A copy of electronic objections and hearing requests filed with the Hearing Clerk must be submitted as an ASCII file avoiding the use of special characters and any form of encryption.

The official record for this rulemaking, as well as the public version, as described above will be kept in paper form. Accordingly, EPA will transfer any objections and hearing requests received electronically into printed, paper form as they are received and will place the paper copies in the official rulemaking record which will also include all objections and hearing requests submitted directly in writing. The official rulemaking record is the paper record maintained at the address in ''ADDRESSES'' at the beginning of this document.

Under Executive Order 12866 (58 FR 51735, October 4, 1993), the Agency must determine whether the regulatory action is ''significant'' and therefore subject to all the requirements of the Executive Order (i.e., Regulatory Impact Analysis, review by the Office of Management and Budget (OMB)). Under section 3(f), the order defines ''significant'' as those actions likely to lead to a rule (1) having an annual effect on the economy of $100 million or more, or adversely and materially affecting a sector of the economy, productivity, competition, jobs, the environment, public health or safety, or State, local, or tribal governments or communities (also known as ''economically significant''); (2) creating serious inconsistency or otherwise interfering with an action taken or planned by another agency; (3) materially altering the budgetary impacts of entitlement, grants, user fees, or loan programs; or (4) raising novel legal or policy issues arising out of legal mandates, the President's priorities, or the principles set forth in this Executive Order.

Pursuant to the terms of this Executive Order, EPA has determined that this rule is not ''significant'' and is therefore not subject to OMB review.

Pursuant to the requirements of the Regulatory Flexibility Act (Pub. L. 96–354, 94 Stat. 1164, 5 U.S.C. 601–612), the Administrator has determined that regulations establishing new tolerances or raising tolerance levels or establishing exemptions from tolerance requirements do not have a significant economic impact on a substantial number of small entities. A certification statement to this effect was published in the Federal Register of May 4, 1981 (46 FR 24950).

List of Subjects in 40 CFR Parts 180 and 186

Environmental protection, Administrative practice and procedure, Agricultural commodities, Feed additives, Pesticides and pests, Reporting and recordkeeping requirements.

Dated: February 15, 1996.

Stephen L. Johnson,

*Director, Registration Division, Office of Pesticide Programs.*

Therefore, 40 CFR parts 180 and 186 are amended as follows:

## PART 180—[AMENDED]

1. In part 180:

a. The authority citation for part 180 continues to read as follows:

Authority: 21 U.S.C. 346a and 371.

b. In § 180.472, by amending the table in paragraph (a) by adding and alphabetically inserting the following new entries and by removing and reserving paragraph (b), to read as follows:

**§ 180.472 1-[(6-Chloro-3-pyridinyl)methyl]-N-nitro-2-imidazolidinimine; tolerances for residues.**

(a) * * *

| Commodity | Parts per million |
|---|---|
| * * * * * * * | |
| Cotton, gin byproducts | 4.0 |
| Cottonseed | 6.0 |
| * * * * * * * | |

(b) [Reserved]

* * * * *

## PART 186—PESTICIDES IN ANIMAL FEED

2. In part 186:

a. By revising the heading of part 186 to read as set forth above.

b. The authority citation for part 186 is revised to read as follows:

Authority: 21 U.S.C. 342, 348, and 701.

c. In § 186.900, by revising paragraph (b), to read as follows:

**§ 186.900 1-[(6-Chloro-3-pyridinyl)methyl]-N-nitro-2-imidazolinimine; tolerances for residues.**

* * * * *

(b)(1) A maximum residue level regulation is established for residues of the insecticide 1-[(6-choro-3-pryidinyl)methyl]-*N*-nitro-2-imidazolidinimine in or on the following feed resulting from application of the insecticide to cotton:

| Feed | Parts per million |
|---|---|
| Cottonseed meal | 8.0 |

(2) The regulation in paragraph (b)(1) of this section reflects the maximum level of residues in cottonseed meal consistent with use of 1-[(6-chloro-3-pyridinyl) methyl]-*N*-nitro-2-imidazolidinimine on cotton in conformity with § 180.472 of this chapter and with the use of good manufacturing practices.

* * * * *

[FR Doc. 96–4392 Filed 2–28–96; 8:45 am]

BILLING CODE 6560–50–F

## 40 CFR Part 271

**[FRL–5423–2]**

## Washington; Final Authorization of State Hazardous Waste Management Program Revisions

**AGENCY:** Environmental Protection Agency.

**ACTION:** Immediate final rule.

**SUMMARY:** The State of Washington has applied for final authorization of revisions to its hazardous waste program under the Resource Conservation and Recovery Act (RCRA). The Environmental Protection Agency (EPA) has reviewed Washington's application and has made a decision, subject to public review and comment, that Washington's hazardous waste program revision satisfies all of the requirements necessary to qualify for final authorization. Thus, EPA intends to approve Washington's hazardous waste program revisions. Washington's application for program revision is available for public review and comment.

**DATES:** Final authorization for the State of Washington shall be effective April 29, 1996, unless EPA publishes a prior Federal Register action withdrawing this immediate final rule. All comments on the State of Washington's program revision application must be received by the close of business April 1, 1996.

**ADDRESSES:** Copies of the State of Washington's program revision application are available during normal business hours at the following addresses for inspection and copying: U.S. Environmental Protection Agency, Region 10, Library, 1200 Sixth Avenue, Seattle WA 98101, contact: (206) 553–1259; Washington Department of Ecology, 300 Desmond Drive, Lacey WA 98503, contact: Patricia Hervieux, (360) 407–6756; Washington Department of Ecology, Eastern Region, N. 4601 Monroe, Suite 100, Spokane WA 99205, contact: Jim Malm, (509) 456–2725. Written comments should be sent to Patricia Springer, U. S. Environmental Protection Agency, Region 10, HW–105, 1200 Sixth Avenue, Seattle WA 98101, Phone (206) 553–2858.

**FOR FURTHER INFORMATION CONTACT:** Patricia Springer, U. S. Environmental Protection Agency, Region 10, HW–105, 1200 Sixth Avenue, Seattle WA 98101, Phone (206) 553–2858.

**SUPPLEMENTARY INFORMATION:**

### Background

States with final authorization under Section 3006(b) of the Resource Conservation and Recovery Act (''RCRA or ''the Act''), 42 U.S.C. 6929(b), have a continuing obligation to maintain a hazardous waste program that is equivalent to, consistent with, and no less stringent than the Federal hazardous waste program. In addition, as an interim measure, the Hazardous and Solid Waste Amendments of 1984 (Public Law 98–616, November 8, 1984, hereinafter ''HSWA'') allows States to revise their programs to become substantially equivalent instead of equivalent to RCRA requirements promulgated under HSWA authority. States exercising the latter option receive ''interim authorization'' for the HSWA requirements under Section 3006(g) of RCRA, 42 U.S.C. 6926(g), and later apply for final authorization for the HSWA requirements.

Revisions to State hazardous waste programs are necessary when federal or state statutory or regulatory authority is modified or when certain other changes occur. Most commonly, state program revisions are necessitated by changes to EPA's regulations in 40 CFR Parts 124, 260–266, 268, 270 and 279.

### State of Washington

The State of Washington initially received final authorization on January 31, 1986. Washington also received authorization for revisions to its program on November 23, 1987 (52 FR 35556, 9/22/87), October 16, 1990 (55 FR 33695, 8/17/90), and November 4, 1994 (59 FR 55322, 11/4/94). On November 9, 1995, Washington submitted a program revision application for additional program approvals. Today, Washington is seeking approval of its program revision in accordance with 40 CFR 271.21(b)(3).

EPA has reviewed Washington's application, and has made an immediate final decision that the State's hazardous waste program revision satisfies all of the requirements necessary to qualify for final authorization. Consequently, EPA intends to grant final authorization for the additional program modifications to Washington's hazardous waste program. The public may submit written comments on EPA's immediate final decision up until (insert date at least 30 calendar days after date of publication in Federal Register). Copies of the State of Washington's application for program revision are available for inspection and copying at the locations indicated in the **ADDRESSES** section of this notice.

Approval of the State of Washington's program revision shall become effective in 60 days unless an adverse comment pertaining to the State's revision discussed in this notice is received by the end of the comment period. If an adverse comment is received EPA will publish either (1) A withdrawal of the immediate final decision or (2) a notice containing a response to comments which either affirms that the immediate final decision takes effect or reverses the decision.

The State of Washington has requested authorization for the following federal rules:

Non-HSWA Rules:

- Hazardous Waste Storage and Treatment Tank Systems, 51 FR 25422, 7/14/86 (CL 28);
- Listing of Commercial Chemical Products and Appendix VIII Constituents—Correction, 51 FR 28296, 8/6/86 (CL 29);
- Revised Manual SW–846, 52 FR 8072, 3/16/87 (CL 35);
- Hazardous Waste Tank Systems—Correction, 51 FR 29430, 8/15/86 (CL 28);
- Closure/Post-Closure Care for Interim Status Surface Impoundments, 52 FR 8704, 3/19/87 (CL 36);
- Definition of Solid Waste—Technical Correction, 52 FR 21306, 6/5/87 (CL 37);
- HW Constituents for Ground Water Monitoring (Phase I), 52 FR 25942, 7/9/87 (CL 40);
- Listing of Hazardous Waste—Container/Inner Liner Correction, 52 FR 26012, 7/10/87 (CL 41);
- Liability Requirements for HW Facilities—Corporate Guarantee, 52 FR 44314, 11/18/87 (CL 43);
- Miscellaneous Units, 52 FR 46946, 12/10/87 (CL 45);
- Technical Correction—Listing of Hazardous Waste, 53 FR 13382, 4/22/88 (CL 46);
- Treatability Studies Sample Exemption, 53 FR 27290, 7/19/88 (CL 49);
- Storage and Treatment Tank Systems, 53 FR 34079, 9/2/88 (CL 52);
- Listing of Primary Metal Smelter Wastes—Spent Pot Liner, 53 FR 35412, 9/13/88 (CL 53);
- Permit Modifications for HW Management Facilities, 53 FR 37912, 9/28/88 and 53 FR 41649, 10/24/88 (CL 54);
- Statistical Methods for Evaluating Ground Water Monitoring Data, 53 FR 39720, 10/11/88 (CL 55);
- Hazardous Waste Miscellaneous Units, 54 FR 615, 1/9/89 (CL 59);
- Incinerator Permits, 54 FR 4286, 1/30/89 (CL 60);
- Changes to Interim Status Facilities & Modifications to HW Management Permits; Procedures for Post-Closure Permitting, 54 FR 9596, 3/7/89 (CL 61).

HSWA Rules:

- Dioxin Waste Listings, 50 FR 1978, 1/14/85 (CL 14);
- Paint Filter Test, 50 FR 18370, 4/30/85 (CL 16);
- Research and Development Permits, 50 FR 28702, 7/15/85 (CL 17Q);
- Used Oil and HW Burned as Fuels, 50 FR 49164, 11/29/85 and 52 FR 11819, 4/13/87 (CL 19);
- Small Quantity Generator Requirements, 51 FR 10146, 3/24/86 (CL 23);
- Codification Rule, Technical Correction, 51 FR 19176, 5/28/86 (CL 25);
- Listing of EBDC, 51 FR 37725, 10/24/86 (CL 33);
- Toxicity Characteristic Revisions, 55 FR 11798, 3/29/90 and 55 FR 26986, 6/29/90 (CL 74).

The CL numbers reference regulation-specific checklists in the application which identify the specific federal regulation citation and the state regulation analog.

Some portions of Washington's revised program are broader in scope than the federal program, and thus are not federally enforceable. This action does not authorize the identified broader in scope provisions. Some portions of Washington's revised program are more stringent than the federal program. This action makes these more stringent provisions a part of the federally authorized RCRA program. Both the broader in scope and more stringent provisions are identified in the Checklists and discussed in the Attorney General's Statement accompanying the application.

## Indian Lands

Washington is not seeking authorization to operate on Indian lands.

## Decision

I conclude that the State of Washington's program revision application meets all of the statutory and regulatory requirements established by RCRA. Accordingly, Washington is granted final authorization to operate its hazardous waste program as revised. Washington now has responsibility for permitting treatment, storage, and disposal facilities within its borders and carrying out the aspects of the RCRA program described in its revised program application, subject to the limitations of the HSWA. The State of Washington also has primary enforcement responsibilities, although EPA retains the right to conduct inspections under Section 3007 of RCRA, 42 U.S.C. 6927, and to take enforcement actions under Sections 3008, 3013 and 7003 of RCRA, 42 U.S.C. 6928, 6934, and 6973.

## Compliance With Executive Order 12866

The Office of Management and Budget has exempted this rule from the requirements of Section 6 of Executive Order 12866.

## Certification Under the Regulatory Flexibility Act

Pursuant to the provisions of 4 U.S.C. 605(b), I hereby certify that this authorization will not have a significant economic impact on a substantial number of small entities. This authorization effectively suspends the applicability of certain Federal regulations in favor of the State of Washington's program, thereby eliminating duplicative requirements for handlers of hazardous waste in the State. It does not impose any new burdens on small entities. This rule, therefore, does not require a regulatory flexibility analysis.

## Authority

This notice is issued under the authority of Sections 2002(a), 3006 and 7004(b) of the Solid Waste Disposal Act as amended 42 U.S.C. 6912(a), 6926, 6974(b).

Dated‘ February 8, 1996.

Chuck Clarke,

*Regional Administrator.*

[FR Doc. 96–3718 Filed 2–28–96; 8:45 am]

**BILLING CODE 6560–50–P**

## FEDERAL COMMUNICATIONS COMMISSION

### 47 CFR Part 61

**[CC Docket No. 95–155; DA 96–69]**

### Toll Free Service Access Codes

**AGENCY:** Federal Communications Commission.

**ACTION:** Final rule.

**SUMMARY:** The Report and Order resolves certain issues essential to the industry opening the 888 toll free service access code (''SAC'') on March 1, 1996. The Report and Order adopted by the Common Carrier Bureau of the FCC, identifies which numbers in the 888 Service Access Code (''SAC'') will become generally available for reservation on February 10, 1996 and establishes limits on how many 888 and 800 numbers each Responsible Organization (''RespOrg'') may reserve so as to not overload the system and interrupt the reservation process. For tariffing purposes, the Report and Order concludes that toll free service using the 888 SAC is functionally equivalent to toll free service that uses the 800 SAC. The introduction of the 888 SAC for toll free calling is determined to be an expansion of the universe of toll free numbers brought on by an increase in the demand for toll free services and is considered to be similar to an increase in network capacity. Local exchange carriers (''LECs'') are, therefore, not allowed to treat the costs and investments associated with the introduction of the 888 SAC exogenously under price caps.

**EFFECTIVE DATE:** January 25, 1996.

**FOR FURTHER INFORMATION CONTACT:** Irene Flannery, (202) 418–2373; Mary DeLuca (202) 418–2344; Bradley S. Wimmer (202) 418–2351 Network Services Division, Common Bureau.

**SUPPLEMENTARY INFORMATION:** This document summarizes the Bureau's Report and Order In the Matter of Toll Free Service Access Codes (CC Docket 95–155, adopted January 24, 1996, and released January 25, 1996, DA 96–69). The file is available for inspection and copying during the weekday hours of 9:00 a.m. to 4:30 p.m. in the Commission's Reference Center, room 239, 1919 M Street, N.W., Washington, D.C., or copies may be purchased from the Commission's duplicating contractor, ITS, Inc., 2100 M Street, N.W., Suite 140, Washington, D.C. 20037, phone (202) 857–3800.

Paperwork Reduction Act

The Report and Order contains no requests for data and, therefore, does not require review by the Office of Management and Budget under the Paperwork Reduction Act of 1995.

Analysis of Proceeding

*Background*

In October 1995, the Commission initiated a rulemaking proceeding to ensure that in the future, toll free numbers are allocated on a fair, equitable and orderly basis. Generally, the Notice sought comment on proposals to: (1) promote the efficient use of toll free numbers; (2) foster the fair and equitable reservation and distribution of toll free numbers; (3) smooth the transition period preceding introduction of a new toll free code; (4) guard against warehousing of toll free numbers; and (5) determine how toll free vanity numbers should be treated. (CC Docket No. 95–155, FCC 95–419, 60 FR 53157, October 12, 1995) That Notice was issued in response to industry reports that the existing pool of toll free numbers were being consumed at a rate that would exhaust the supply of toll free numbers in the 800 Service Access Code (''SAC'') before the 888 SAC would be deployed. On January 24, 1996, the Commission released an Order (CC Docket No. 95–155, adopted January 23, 1996, FCC 96–18) that delegated to the Chief of the Common Carrier Bureau (''Bureau'') the authority to resolve the issues essential to the industry opening the 888 toll free service access code (''SAC'') on schedule. Toll free service using the 888 SAC is currently scheduled to begin on March 1, 1996.

*Summary*

1. The Report and Order resolves those issues essential to opening the 888 SAC for toll free calling according to schedule. Specifically, the Report and Order defers the issue of what permanent protection, if any, those subscribers with a commercial interest in preventing their 800 number from being replicated in the 888 code will be afforded to the Commission; concludes that RespOrgs should determine which toll free subscribers using the 800 SAC will have their 800 numbers protected from replication in the 888 code during the initial reservation of 888 numbers; sets the date for which initial reservation of 888 numbers will begin; sets limitations on the number of numbers that RespOrgs will be allowed to reserve for both 800 and 888 numbers; and concludes that the costs incurred by LECs regulated under price caps to upgrade the 800 database will not be treated as exogenous.

2. In this Order, the Bureau agrees with the SMS/800 Number Administration Committee (''SNAC'') that RespOrgs should poll their 800 subscribers to determine which numbers subscribers may want replicated in 888. We expect that RespOrgs will continue this polling process until February 1, 1996. We direct Database Management Services, Inc. (''DSMI'') to set aside those 888 numbers identified by the RespOrgs by placing these ''vanity numbers'' in ''unavailable'' status until we resolve whether these numbers should be afforded any special right or protection on a permanent basis. We also conclude that the entire ''888–555'' NXX should be designated as ''unavailable'' until the Commission resolves those issues that will permit competitive toll free directory assistance services.

3. The Bureau concludes that first come, first served remains the most equitable, easily administered, and least expensive means of allocating toll free numbers. The Order sets February 10, 1996 as the date for which reservation of 888 toll free numbers will begin. The 888 numbers will be rationed based on a version of the 800 number conservation plan initiated to delay the complete exhaust of toll free numbers in the 800 SAC until after the 888 SAC is in use for toll free calling. The Bureau implements a conservation plan in order to avoid a system overload that would temporarily interrupt the reservation process. According to the Bureau's conservation plan, up to 120,000 888 numbers per week may be reserved. The Bureau does not, however, at this time discontinue the conservation of 800 numbers but, instead, increases the size of the allocation from 29,000 numbers a week to 73,000 numbers a week for a three week period and then returns to the 29,000 numbers a week allocation plan.

4. For tariffing purposes, the Bureau concludes that toll free service using the 888 SAC is functionally equivalent to toll free service that uses the 800 code. Moreover, the Bureau concludes that the addition of 888 numbers to the universe of toll free numbers is comparable to an increase in network capacity and, therefore, will not allow the costs attributable to the implementation of 888 to be treated as exogenous by carriers regulated under price caps.

Ordering Clauses

Accordingly, IT IS ORDERED that, pursuant to authority contained in Sections 1, 4, 5, and 201–205 of the Communications Act of 1934, as amended, 47 U.S.C. §§ 151, 154, 155, and 201–205, Section 0.201(d) of the Commission's rules, 47 C.F.R.

§ 0.201(d), this Report and Order is hereby ADOPTED.

IT IS FURTHER ORDERED that, pursuant to 5 U.S.C. § 554(d) and 47 C.F.R. § 1.103(a), this Report and Order shall take effect upon adoption.

List of Subjects in 47 CFR Part 61

Communication common carriers.

Federal Communications Commission.

John S. Morabito,

*Deputy Chief, Network Services Division, Common Carrier Bureau.*

[FR Doc. 96–4632 Filed 2–28–96; 8:45 am]

BILLING CODE 6712–01–P

## 47 CFR Part 73

**[MM Docket No. 95–85; RM–8518]**

## Radio Broadcasting Services; Copeland, KS

**AGENCY:** Federal Communications Commission.

**ACTION:** Final rule; correction.

**SUMMARY:** This document contains a correction to the final regulation document which was published Friday, January 26, 1996 (61 FR 02453).

**EFFECTIVE DATE:** February 29, 1996.

**FOR FURTHER INFORMATION CONTACT:** Barbara Chappelle, Publications Branch, (202) 418–0310.

**SUPPLEMENTARY INFORMATION:**

Need of Correction

As published, the final regulation document contains an error in the window period and closing date.

Correction of Publication

Accordingly, the publication on January 26, 1996 of the final regulations, which were subject of FR Doc. 96–1420 is Corrected as follows:

On page 02453, in the second column, In the **DATES** section, the window period closing date for filing applications should be April 4, 1996 in lieu of March 19, 1996.

Federal Communications Commission.

William F. Caton,

*Acting Secretary.*

[FR Doc. 96–4631 Filed 2–28–96; 8:45 am]

BILLING CODE 6712–01–P

## 47 CFR Part 73

**[MM Docket No. 95–43; RM–8580]**

## Radio Broadcasting Services; Grand Junction, CO

**AGENCY:** Federal Communications Commission.

**ACTION:** Final rule; correction.

**SUMMARY:** This document contains a correction to the final regulation document which was published Friday, January 26, 1996 (61 FR 02453).

**EFFECTIVE DATE:** February 29, 1996.

**FOR FURTHER INFORMATION CONTACT:** Barbara Chappelle, Publications Branch, (202) 418–0310.

**SUPPLEMENTARY INFORMATION:**

Need of Correction

As published, the final regulation document contains an error in the window period and closing date.

Correction of Publication

Accordingly, the publication on January 26, 1996 of the final regulations, which were the subject of FR Doc. 96–1422 is corrected as follows:

On page 02453, in the third column, in the **DATES** section, the window period closing date for filing applications should be April 4, 1996 in lieu of March 19, 1996.

Federal Communications Commission.

William F. Caton,

*Acting Secretary.*

[FR Doc. 96–4630 Filed 2–28–96; 8:45 am]

BILLING CODE 6712–01–P

## DEPARTMENT OF DEFENSE

## 48 CFR Parts 202, 204, 209, 213, 215, 216, 217, 223, 225, 228, 232, 235, 236, 242, 246, 252, 253, and Appendix G to Chapter 2

**[Defense Acquisition Circular (DAC) 91–10]**

## Defense Federal Acquisition Regulation Supplement; Miscellaneous Amendments

**AGENCY:** Department of Defense (DoD).

**ACTION:** Final rules.

**SUMMARY:** Defense Acquisition Circular (DAC) 91–10 amends the Defense Federal Acquisition Regulation Supplement (DFARS) to revise, finalize, or add language on undefinitized contract actions; warranties; institutions of higher education; should cost reviews; construction and architect-engineer contracts; sensitive conventional arms, ammunition, and explosives; international trade agreements; foreign offset agreements; tank and automotive forging items; progress payment rates; research and development contracting; contract administration; and foreign military sales.

**EFFECTIVE DATE:** February 29, 1996.

**FOR FURTHER INFORMATION CONTACT:** Mrs. Susan Buckmaster, OUSD(A&T)DP(DAR), IMD 3D139, 3062 Defense Pentagon, Washington, DC 20301–3062. Telephone (703) 602–0131. Telefax (703) 602–0350.

**SUPPLEMENTARY INFORMATION:**

A. Background

This Defense Acquisition Circular (DAC) 91–10 includes 17 rules and miscellaneous editorial amendments. Three of the rules in the DAC (Items VII, X, and XVII) were published previously in the Federal Register (61 FR 130, January 3, 1996; 61 FR 3600, February 1, 1996; and February 26, 1996; respectively) and thus are not included as part of this rulemaking notice. These three rules are being published in the DAC to conform the loose-leaf edition of DFARS to the previously published revisions.

B. Regulatory Flexibility Act

*DAC 91–10, Items IV, XII, XIII, XIV, XV, and XVI*

The Regulatory Flexibility Act does not apply because these rules are not significant revisions within the meaning of the Regulatory Flexibility Act, 5 U.S.C. 601 *et seq.* However, comments from small entities will be considered in accordance with Section 610 of the Act. Please cite the applicable DFARS case number in correspondence.

*DAC 91–10, Items I, III, V, VIII, IX, and XI*

DoD certifies that these rules will not have a significant economic impact on a substantial number of small entities within the meaning of the Regulatory Flexibility Act because:

Item I—The rule primarily (1) pertains to internal Government considerations regarding use of warranties; and (2) consolidates and standardizes existing regulatory requirements pertaining to undefinitized contract actions.

Item III—Contracts awarded to small entities normally are not subject to program or overhead should-cost reviews.

Item V—The rule merely provides a standard method of implementing security requirements which already exist under DoD 5100.76–M.

Item VIII—The rule retains the policy of acquiring tank and automotive forging items from domestic sources to the maximum extent practicable. The new exception only applies to forging items purchased as tank and automotive spare parts, when the end use of the spare parts is unknown.

Item IX—The rule merely clarifies the scope of offset administrative costs that

contractors may recover under foreign military sales contracts. Also, most companies involved in offset arrangements are not small businesses.

Item XI—The reduction in the customary progress payment rate only applies to large businesses. While the rule also precludes the use of flexible progress payments for contracts resulting from solicitations issued on or after November 30, 1993, this change is not expected to have a significant economic impact on a substantial number of small entities, because the customary progress payment rates for small and small disadvantaged businesses generally are more favorable than a flexible progress payment rate with its associated terms and conditions.

*DAC 91–10, Items II and VI*

The Regulatory Flexibility Act applies. A final regulatory analysis has been performed and is available by writing the Defense Acquisition Regulations Council, OUSD(A&T)DP(DAR), 3062 Defense Pentagon, Washington, DC 20301–3062

C. Paperwork Reduction Act

*DAC 91–10, Items I, II, III, IV, VI, VIII, IX, XI, XII, XIII, XIV, XV, and XVI*

The Paperwork Reduction Act does not apply because these rules do not impose any information collection requirements which require the approval of OMB under 44 U.S.C. 3501 *et seq.*

*DAC 91–10, Item V*

The Paperwork Reduction Act applies. OMB has approved the information collection requirement under OMB Control Number 0704–0385.

Michele P. Peterson,

*Executive Editor, Defense Acquisition Regulations Council.*

Defense Acquisition Circular (DAC) 91–10 amends the Defense Federal Acquisition Regulation Supplement (DFARS) 1991 edition. The amendments are summarized as follows:

Item I—Contract Award (DFARS Case 95–D702)

This final rule (1) amends DFARS Parts 216 and 217 to implement Section 1505 of Pub. L. 103–355 and to clarify guidance on undefinitized contract actions (UCAs); (2) amends the guidance on warranties at 246.770 to implement Section 2402 of Pub. L. 103–355; and (3) adds a new clause on definitization of UCAs at 252.217–7027. The new clause is similar to, and will be used instead of, the clause as FAR 52.216–25, Contract Definitization, which was designed for use in letter contracts only.

Item II—Institutions of Higher Education (DFARS Case 94–D310)

The interim rule published as Item IX of DAC91–9 is revised and finalized. The rule implements Section 558 of the Fiscal Year 1995 Defense Authorization Act (Pub. L. 103–337). Section 558 provides that no funds available to DoD may be provided by grant or contract to any institution of higher education that has a policy of denying, or which effectively prevents the Secretary of Defense from obtaining for military recruiting purposes, entry to campuses, access to students on campuses, or access to directory information pertaining to students. The final rule differs from the interim rule in that it makes clarifying revisions at 209.470–1 and 252.209–7005, and adds language at 209.470–1(c) to state that, when specific subordinate elements of an institution of higher education, rather than the institution as a whole, have a prohibited policy or practice, the prohibition on use of DoD funds applies only to those subordinate elements.

Item III—Overhead Should Cost Reviews (DFARS Case 92–D010

This final rule revises DFARS 215.810 to specify when DoD activities should consider performing an overhead should cost review of a contractor business unit. This DFARS rule supplements the FAR rule published as Item VIII of Federal Acquisition Circular 90–37 on January 26, 1996. Both the FAR and the DFARS rules become effective on March 26, 1996.

Item IV—Cost-Plus-Fixed-Fee Contracts for Military Construction (DFARS Case 95–D024)

This final rule adds new sections at DFARS 216.306 and 232.703–70 and revises 236.271 to expand guidance on statutory restrictions pertaining to the use of cost-plus-fixed-fee contracts for military construction.

Item V—Safeguarding Sensitive Conventional Arms, Ammunition, and Explosives (DFARS Case 95–D001)

This final rule adds a new subpart at DFARS 223.72 and a new contract clause at 252.223–7007 to provide guidance on physical security requirements for contracts involving sensitive conventional arms, ammunition, and explosives. Section 204.202 is amended to specify additional requirements for distribution of contracts containing the clause at 252.223–7007.

Item VI—Applicability of Trade Agreements (DFARS Case 95–D022)

This final rule amends DFARS 225.402 to provide that the value of an acquisition for purposes of determining the applicability of both the North American Free Trade Agreement Act and the Trade Agreements Act is the total value of all end products subject to the acts.

Item VII—Uruguay Round (1996 Agreement) (DFARS Case 95–D306)

This final rule was issued by Departmental Letter 95–019, effective January 1, 1996. The rule amends DFARS 225.402 and the clause at 252.225–7007 to implement the DoD-unique requirements of the renegotiated General Agreement on Tariffs and Trade (GATT) Government Procurement Agreement (1996 Code) (Uruguay Round), which became effective January 1, 1996. This agreement is implemented in statute by the Uruguay Round Agreement Act, Pub. L. 103–465, which amends the Trade Agreements Act of 1979.

Item VIII—Tank and Automotive Forging Items (DFARS Case 95–D003)

This final rule amends DFARS Subpart 225.71 to add an exception to the foreign source restrictions on the acquisition of forgings. The rule excludes forging purchases as tank and automotive spare parts from foreign source restrictions, except when it is known that the parts are for use in tanks only.

Item IX—Offset Implementation Costs (DFARS Case 95–D019)

This final rule amends DFARS 225.7303–2 to clarify that, under a foreign military sales contract, a contractor may recover costs incurred to implement its offset agreement with a foreign government or international organization, if the foreign military sale Letter of Offer and Acceptance is financed wholly with customer cash or repayable foreign military finance credits.

Item X—Alternatives to Miller Act Bonds (DFARS Case 95–D305)

This interim rule was issued by Departmental Letter 96–001, effective February 1, 1996. The rule revises the interim rule which was published as Item XXIII of DAC 91–9 to provide alternative payment protections for construction contracts between $25,000 and $100,000, pending implementation of Section 4104(b)(2) of the Federal Acquisition Streamlining Act of 1994 (Pub. L. 103–355) in the FAR. This interim rule amends the guidance at

DFARS 228.171 to require the contracting officer to specify two or more alternative payment protections when using the clause at 252.228–7007, and to give particular consideration to use of an irrevocable letter of credit as one of the specified alternatives. This rule also amends the clause at 252.228–7007 to exclude payment bonds from the payment protections under which the contracting officer may access funds.

Item XI—Reduction in Progress Payment Rates (DFARS Case 93–D305)

The interim rule published as Item XXVII of DAC 91–6 is revised and finalized. The rule implements Section 8155 of the Fiscal Year 1994 Defense Appropriations Act (Pub. L. 103–139). Section 8155 requires DoD to reduce the customary progress payment rate for large business concerns from 85 percent to 75 percent for contracts resulting from solicitations issued on or after November 11, 1993. The final rule differs from the interim rule in that it makes an editorial change in the table at 232.502–1–71, and amends the clause at 252.232–7004 to state that the 75 percent customary progress payment rate for large business concerns also applies to progress payments made under undefinitized contract actions.

Item XII—Streamlined Research and Development (R&D) Update (DFARS Case 95–D036)

This final rule amends DFARS Subpart 235.70 to update administrative information pertaining to the streamlined R&D contracting test program, and to revise the list of clauses in the streamlined R&D contracting format to conform to FAR and DFARS revisions which occurred since initiation of the test program.

Item XIII—Performance Evaluations for Construction and Architect-Engineer Contracts (DFARS Case 95–D034)

This final rule amends DFARS 236.201 and 236.604 to prescribe use of DD Forms 2626 and 2631 in lieu of Standard Forms 1420 and 1421, respectively. The forms are used to document contractor performance under construction and architect-engineer contracts. Copies of DD Forms 2626 and 2631 are added to Subpart 253.3.

Item XIV—Magnitude of Construction Projects (DFARS Case 95–D031)

This final rule adds a new section at DFARS 236.204 to provide additional price ranges for identifying the magnitude of construction projects in advance notices and solicitations.

Item XV—Flexible Contract Administration Services (DFARS Case 95–D030)

This final rule amends DFARS 242.203 to expand the conditions under which the Defense Contract Management Command may perform contract administration services on a military installation.

Item XVI—Military Assistance Program Address (MAPAD) Codes (DFARS Case 95–D032)

This final rule amends DFARS 253./213–70 to clarify instructions for inclusion of foreign military sale shipment information in Block 14 of DD Form 1155.

Item XVII—Allowability of Costs (DFARS Case 95–D309)

This interim rule was issued by Departmental Letter 96–002, effective February 26, 1996. The rule adds language at DFARS 231.205–6 to implememt Section 8122 of the Fiscal Year 1996 Defense Appropriations Act (Pub. L. 104–61). Section 8122 prohibits DoD from using fiscal year 1996 funds to reimburse a contractor for costs paid by the contractor to an employee for a bonus or other payment in excess of the normal salary paid to the employee, when such payment is part of restructuring costs associated with a business combination.

Item XVIII—Small Disadvantaged Business Utilization Program (Information Item)

On October 23, 1995, the Under Secretary of Defense for Acquisition and Technology suspended those sections of the DFARS which prescribe set-aside of acquisitions for small disadvantaged businesses. This suspension takes account of the Supreme Court's decision in *Adarand Constructors, Inc. v. Pena*, 63 U.S.L.W. 4523 (U.S. June 12, 1995), while an interagency Government-wide review of affirmative action programs is conducted. The suspended DFARS sections are 219.501(S–70), 219.502–2–70, 219.502–4, 219.504(b)(i), 219.506, 219.508(e), 219.508–70, and 252.219–7002. Although these sections, and references thereto, still appear in the DFARS text, use of these sections is suspended until further notice.

Item XIX—Editorial Revisions

(a) DFARS 202.101 and Appendix G are amended to update activity names and addresses.

(b) DFARS Part 213 is amended to update statutory references and to conform to revisions to FAR Part 13 published in Federal Acquisition Circular 90–29.

(c) DFARS 228.106–4, 228.106–4–70, 228.106–6, and 252.228–7006 are deleted. The guidance in these sections has been superseded by the guidance in FAR 28.106–4(b), 28.106–6(d), and 52.228–12, published in Federal Acquisition Circular 90–32.

(d) DFARS Part 253 is amended to update DD Forms 375, 375c, 428, 1659, 2222, 2222–2, and 2604. (This amendment is being made only in the loose-leaf edition of the DFARS.)

Interim Rules Adopted as Final With Changes

## PARTS 209 AND 252—[AMENDED]

The interim rule published at 60 FR 13073 on March 10, 1995, and amended at 60 FR 61593 and 61600 on November 30, 1995, is adopted as final with a revision at section 209.470–1 and amendments at section 252.209–7005.

## PARTS 232 AND 252—[AMENDED]

The interim rule published at 58 FR 62045 on November 24, 1993, and corrected at 58 FR 64363 on December 6, 1993, is adopted as final with amendments at section 252.232–7004.

List of Subjects in 48 CFR Parts 202, 204, 209, 213, 215, 216, 217, 223, 225, 228, 232, 235, 236, 242, 246, 252, 253, and Appendix G to Chapter 2

Government procurement.

Amendments to 48 CFR Chapter 2 (Defense Federal Acquisition Regulation Supplement)

48 CFR Chapter 2 (the Defense Federal Acquisition Regulation Supplement) is amended as set forth below.

1. The authority for 48 CFR Parts 202, 204, 209, 213, 215, 216, 217, 223, 225, 228, 232, 235, 236, 242, 246, 252, 253, and Appendix G to Chapter 2 continues to read as follows:

Authority: 41 U.S.C. 421 and 48 CFR Chapter 1.

## PART 202—DEFINITIONS OF WORDS AND TERMS

### 202.101 [Amended]

2. Section 202.101 is amended in the definition entitled ''Contracting activity'' under the heading ''NAVY,'' by removing the two entries ''Ships Parts Control Center'' and ''Navy Aviation Supply Office'', by adding the entry ''Naval Inventory Control Point'' after the entry ''Naval Facilities Engineering Command''; and by revising the entry ''U.S. Marine Corps Research, Development, and Acquisition Command'' to read ''Marine Corps Systems Command''.

## PART 204—ADMINISTRATIVE MATTERS

3. Section 204.202 is amended by removing in paragraph (1)(iii) the word ''and''; by removing in paragraph (1)(iv) the period and adding ''; and''; and by adding a new paragraph (1)(v) to read as follows:

**204.202 Agency distribution requirements.**

(1) * * *

(v) One copy, or an extract of the pertinent information, to the cognizant Defense Investigative Service office listed in DoD 5100.76–M, Physical Security of Sensitive Conventional Arms, Ammunition, and Explosives, when the clause at 252.223–7007, Safeguarding Sensitive Conventional Arms, Ammunition, and Explosives, is included in the contract.

* * * * *

## PART 209—CONTRACTOR QUALIFICATIONS

4. Section 209.470–1 is revised to read as follows:

**209.470–1 Policy.**

(a) Section 558 of the National Defense Authorization Act for Fiscal Year 1995 (Public Law 103–337) provides that no funds available to DoD may be provided by grant or contract to any institution of higher education that has a policy of denying or that effectively prevents the Secretary of Defense from obtaining for military recruiting purposes—

(1) Entry to campuses or access to students on campuses; or

(2) Access to directory information pertaining to students.

(b) Institutions of higher education that are determined under 32 CFR part 216 to have the policy or practice in paragraph (a) of this subsection shall be listed as ineligible on the List of Parties Excluded from Federal Procurement Programs published by the General Services Administration (see FAR 9.404).

(c) In cases where a determination is made under 32 CFR part 216 that specific subordinate elements of an institution of higher education, rather than the institution as a whole, have the policy or practice in paragraph (a) of this subsection, 32 CFR part 216 provides that the prohibition on use of DoD funds applies only to those subordinate elements.

5. Part 213 heading is revised to read as follows:

## PART 213—SIMPLIFIED ACQUISITION PROCEDURES

**213.000 [Amended]**

6. Section 213.000 is amended by revising the words ''small purchase'' to read ''simplified acquisition'' and by revising the threshold ''$100,000'' to read ''$200,000''.

7. Section 213.101 is amended by revising the introductory text; by adding a comma in paragraph (1) between the word ''operations'' and the word ''or''; and by revising paragraph (2). The revisions read as follows:

**213.101 Definitions.**

*Contingency operation* is defined in 10 U.S.C. 101(a)(13) as a military operation that—

* * * * *

(2) Results in the call or order to, or retention on, active duty of members of the uniformed services under section 688, 12301(a), 12302, 12304, 12305, or 12406 of Title 10, chapter 15 of Title 10, or any other provision of law during a war or during a national emergency declared by the President or Congress.

**213.204 [Amended]**

8. Section 213.204 is amended by revising in paragraph (b) the phrase ''above the dollar threshold at FAR 13.000'' to read ''not using simplified acquisition procedures.''

**213.402 [Amended]**

9. Section 213.402 is redesignated as 213.401.

**213.403 [Amended]**

10. Section 213.403 is redesignated as 213.402.

**213.404 [Amended]**

11. Section 213.404 is redesignated as 213.403. Newly designated Section 213.403 is amended by adding a period at the end of paragraph (c)(i)(B); and by revising in paragraph (c)(ii) the words ''small purchases'' to read ''simplified acquisitions.''

**213.502–2 [Amended]**

12. Section 213.502–2 is redesignated as Section 213.505–1. Newly designated Section 213.505–1 is amended by revising the heading to read ''Optional Form (OF) 347, Order for Supplies or Services, and Optional Form 348, Order for Supplies or Services Schedule-Continuation.''; by removing in the introductory text the hyphen between the words ''Services'' and ''Schedule''; by adding a hyphen between the words ''Schedule'' and ''Continuation'', by revising in paragraph (b)(i) the words ''small purchase'' to read ''simplified acquisition''; and by revising the sentence in paragraph (b)(i)(F)(*3*) to read ''A purchase order for acquisitions using simplified acquisition procedures.''

13. Section 213.505–3 is amended by revising paragraph (b)(1) introductory text to read as follows:

**213.505–3 Standard Form 44, Purchase Order-Invoice-Voucher.**

(b)(1) The micro-purchase limitation applies to all purchasers except that purchases up to the simplified acquisition threshold may be made for—

* * * * *

14. Section 213.507 is amended by revising the heading; and by revising paragraph (a)(i) to read as follows:

**213.507 Provisions and clauses.**

(a) * * *

(i) Unilateral purchase orders—

(A) FAR 52.252–2, Clauses Incorporated by Reference (required only if other clauses are incorporated by reference);

(B) FAR 52.203–3, Gratuities;

(C) FAR 52.211–16, Variation in Quantity;

(D) FAR 52.222–3, Convict Labor (unless the order will be subject to the Walsh-Healey Public Contracts Act (see FAR subpart 22.6));

(E) FAR 52.222–26, Equal Opportunity (unless exempt under FAR 22.807);

(F) FAR 52.225–3, Buy American Act-Supplies;

(G) FAR 52.232,–1, Payments;

(H) FAR 52.232–25, Prompt Payment;

(I) FAR 52.232–28, Electronic Funds Transfer Payment Methods;

(J) FAR 52.233–1, Disputes;

(K) FAR 52.246–1, Contractor Inspection Requirements (except when an alternate level of quality assurance is necessary (see FAR 46.203 and 46.204)); and

(L) FAR 52.246–16, Responsibility for Supplies.

* * * * *

## PART 215—CONTRACTING BY NEGOTIATION

15. Section 215.810 is revised to read as follows:

**215.810 Should-cost review.**

16. Section 215.810–2 is added to read as follows:

**215.810–2 Program should-cost review.**

(b) DoD contracting activities should consider performing a program should-cost review before award of a definitive major systems contract exceeding $100 million.

17. Section 215.810–3 is added to read as follows:

**215.810–3 Overhead should-cost review.**

(a) Contact the DCMC/DLA Overhead Center, Fort Belvoir, VA 22060–6221, at (703) 767–3387, for questions on overhead should-cost analysis.

(b)(i) The Defense Contract Management Command/Defense Logistics Agency (DCMC/DLA), or the military department responsible for performing contract administration functions (e.g., Navy SUPSHIP), should consider, based on risk assessment, performing an overhead should-cost review of a contractor business unit (as defined in FAR 31.001) when all of the following conditions exist:

(A) Projected annual sales to DoD exceed $1 billion.

(B) Projected DoD versus total business exceeds 30 percent;

(C) Level of sole-source DoD contracts is high;

(D) Significant volume of proposal activity is anticipated;

(E) Production or development of a major weapon system or program is anticipated; and

(F) Contractor cost control/reduction initiatives appear inadequate.

(ii) The head of the contracting activity may request an overhead should-cost review for a business unit which does not meet the criteria in paragraph (b)(i) of this subsection.

(iii) Overhead should-cost reviews are labor intensive. These reviews generally involve participation by the contracting, contract administration, and contract audit elements. The extent of availability of military department, contract administration, and contract audit resources to support DCMC/DLA-led teams should be considered when determining whether a review will be conducted. Overhead should-cost reviews generally shall not be conducted at a contractor business segment more frequently than every three years.

## PART 216—TYPES OF CONTRACTS

18. Section 216.306 is added to read as follows:

**216.306 Cost-plus-fixed-fee contracts.**

(c) *Limitations.*

(i) Annual military construction appropriations acts restrict the use of cost-plus-fixed-fee contracts that—

(A) Are funded by a military construction appropriations act:

(B) Are estimated to exceed $25,000; and

(C) Will be performed within the United States, except Alaska.

(ii) The Secretaries of the military departments are authorized to approve contracts described in paragraph (c)(i) of this section that are for environmental work only, provided the environmental work is not classified as construction, as defined by 10 U.S.C 2801.

(iii) The Secretary of Defense or designee must specifically approve contracts described in paragraph (c)(i) of this section that are not environmental work only.

19. Section 216.603–4 is revised to read as follows:

**216.603–4 Contract clauses.**

(b)(2) See 217.7406(a) for additional guidance regarding use of the clause at FAR 52.216–24, Limitation of Government Liability.

(3) Use the clause at 252.217–7027, Contract Definitization, in accordance with its prescription at 217.7406(b), instead of the clause at FAR 52.216–25, Contract Definitization.

20. Section 216.703 is amended by revising paragraph (c) to read as follows:

**216.703 Basic ordering agreements**

(c) *Limitations.* The period during which orders may be placed against a basis ordering agreement may not exceed three years. The contracting officer, with the approval of the chief of the contracting office, may grant extensions for up to two years. No single extension shall exceed one year. See subpart 217.74 for additional limitations on the use of undefinitized orders under basic ordering agreements.

* * * * *

## PART 217—SPECIAL CONTRACTING METHODS

21. Section 217.202 is amended by adding paragraph (3) to read as follows:

**217.202 Use of options.**

* * * * *

(3) See subpart 217.74 for limitations on the use of undefinitized options.

22. Section 217.7402 is amended by revising in the introductory text the term ''UCA's'' to read ''UCAs'' and by revising paragraph (b) to read as follows:

**217.7402 Exceptions.**

* * * * *

(a) * * *

(b) Purchases at or below the simplified acquisition threshold;

* * * * *

**217.7404–3 [Amended]**

23. Section 217.7404–3 is amended by revising in the introductory text of paragraph (a) the word ''earliest'' to read ''earlier.''

24. Section 217.7406 is revised to read as follows:

**217.7406 Contract clauses.**

(a) Use the clause at FAR 52.216–24, Limitation of Government Liability, in all UCAs, solicitations associated with UCAs, basic ordering agreements, indefinite delivery contracts, and any other type of contract providing for the use of UCAs.

(b) Use the clause at 252.217–7027, Contract Definitization, in all UCAs, solicitations associated with UCAs, basic ordering agreements, indefinite delivery contracts, and any other type of contract providing for the use of UCAs. Insert the applicable information in paragraphs (a), (b), and (d) of the clause. If, at the time of entering into the UCA, the contracting officer knows that the definitive contract action will meet the criteria of FAR 15.804–1 for not requiring submission of cost or pricing data, the words ''and cost or pricing data'' may be deleted from paragraph (a) of the clause.

## PART 223—ENVIRONMENT, CONSERVATION, OCCUPATIONAL SAFETY, AND DRUG-FREE WORKPLACE

25. A new Subpart 223.72 is added to read as follows:

**Subpart 223.72—Safeguarding Sensitive Conventional Arms, Ammunition, and Explosives**

Sec.

223.7200 Definition.
223.7201 Policy.
223.7202 Preaward responsibilities.
223.7203 Contract clause.

### Subpart 223.72—Safeguarding Sensitive Conventional Arms, Ammunition, and Explosives

**223.7200 Definition.**

''Arms, ammunition, and explosives (AA&E),'' as used in this subpart, means those items within the scope (chapter 1, paragraph B) of DoD 5100.76–M, Physical Security of Sensitive Conventional Arms, Ammunition, and Explosives.

**223.7201 Policy.**

(a) The requirements of DoD 5100.76–M, Physical Security of Sensitive Conventional Arms, Ammunition, and Explosives, shall be applied to contracts when—

(1) AA&E will be provided to the contractor or subcontractor as Government-furnished property; or

(2) The principal development, production, manufacture, or purchase of AA&E is for DoD use.

(b) The requirements of DoD 5100.76–M need not be applied to contracts when—

(1) The AA&E to be acquired under the contract is a commercial item within the meaning of FAR 2.101; or

(2) The contract will be performed in a Government-owned contractor-operated ammunition production facility. However, if subcontracts issued under such a contract will meet the criteria of paragraph (a) of this section, the requirements of DoD 5100.76–M shall apply.

**223.7202 Preaward responsibilities.**

When an acquisition involves AA&E, technical or requirements personnel shall specify in the purchase request—

(a) That AA&E is involved; and

(b) Which physical security requirements of DoD 5100.76–M apply.

**223.7203 Contract clause.**

Under the clause at 252.223–7007, Safeguarding Sensitive Conventional Arms, Ammunition, and Explosives, in all solicitations and contracts to which DoD 5100.76–M applies, in accordance with the policy at 223.7201. Complete paragraph (b) of the clause based on information provided by cognizant technical or requirements personnel.

## PART 225—FOREIGN ACQUISITION

26. Section 225.402 is amended by revising paragraph (a) to read as follows:

**225.402 Policy.**

(a) To estimate the value of the acquisition, use the total estimated value of end products subject to trade agreement acts (see 225.403–70).

(1) See 225.105 for evaluation of eligible products and U.S. made end products.

* * * * *

27. Section 225.7102 is amended by revising the introductory text to read as follows:

**225.7102 Policy.**

DoD requirements for the following, including acquisitions for items containing the following, shall be acquired from domestic sources (as described in the clause at 252.225–7025) to the maximum extent practicable—

* * * * *

28. Section 225.7103 is amended by revising paragraph (e)(1); redesignating paragraph (e)(2) as (e)(3); and adding paragraph (e)(2) to read as follows:

**225.7103 Exceptions.**

* * * * *

(e) * * *

(1) Used for commercial vehicles or noncombat support military vehicles;

(2) Purchased as tank and automotive spare parts (except when it is known that the spare parts are for use in tanks only); or

* * * * *

29. Section 225.7303–2 is amended by revising paragraph (a)(3) to read as follows:

**225.7303–2 Cost of doing business with a foreign government or an international organization.**

(a) * * *

(3) Offset implementation costs.

(i) A U.S. defense contractor may recover costs incurred to implement its offset agreement with a foreign government or international organization if the foreign military sale Letter of Offer and Acceptance is financed wholly with customer cash or repayable foreign military finance credits.

(ii) The U.S. Government assumes no obligation to satisfy or administer the offset requirement or to bear any of the associated costs.

* * * * *

## PART 228—BONDS AND INSURANCE

**228.106–4, 228.106–4–70, and 228.106–6 [Removed]**

30. Sections 228.106–4, 228.106–4–70, and 228.106–6 are removed.

## PART 232—CONTRACT FINANCING

31. Section 232.703–70 is added to read as follows:

**232.703–70 Military construction appropriations act restriction.**

Annual military construction appropriations acts restrict the use of funds appropriated by the acts for payments under cost-plus-fixed-fee contracts (see 216.306(c)).

## PART 235—RESEARCH AND DEVELOPMENT CONTRACTING

32. Section 235.7003 is amended by adding a new paragraph (c)(6) to read as follows:

**235.7003 Reporting requirements.**

* * * * *

(c) * * *

(6) Number of actions removed from the test due to inability to comply with RDSS/C procedures, with a brief description of the reasons(s) for the inability to comply.

* * * * *

33. Section 235.7004–3(d) is amended by revising ''Alternate III'' to read ''Alternate II.''

34. Section 235.7006, *Exhibit—Research and Development Streamlined Contracting Format,* Part I—The Schedule, Section H, Special Contract Requirements, is amended by revising the designation ''(H.4)*'' to read ''(H.4)'' and by revising the address in (H.4) and by adding (H.6)* to read as follows:

**235.7006— The research and development streamlined contracting format.**

Exhibit—Research and Development Streamlined Contracting format

Part I—The Schedule

Section H * * *

(H.4) * * * Defense Technical Information Center, Attn: Registration Section (DTIC–BCS), 8725 John J. Kingman Road, Suite 0944, Fort Belvoir, VA 22060–6218,(703) 767–8273, or 1–800–CAL–DITC (225–3842), menu selection 2.

* * * * *

*(H.6) (Insert nonstandard clause approved in accordance with 235.7006(c), if applicable.)

* * * * *

35. Section 235.7006, *Exhibit—Research and Development Streamlined Contracting Format,* Part II—Contract Clauses, and Part IV, Representations and Instructions, are revised to read as follows:

**PART II—CONTRACT CLAUSES**

*Section I, Contract Clauses*

| | | |
|---|---|---|
| (I.1) | 52.252–2 | Clauses Incorporated by Reference. |
| (I.2) | 52.202–1 | Definitions. |
| (I.3) | Reserved. | |
| (I.4) | 52.203–3 | Gratuities. |
| (I.5) | 52.203–5 | Covenant Against Contingent Fees. |
| (I.6) | 52.203–7 | Anti-Kickback Procedures. |
| (I.7) | 52.203–10 | Price or Fee Adjustment for Illegal or Improper Activity. (Except educational institutions.) |
| (I.8) | 52.209–6 | Protecting the Government's Interest When Subcontracting with Contractors Debarred, Suspended, or Proposed for Debarment. |
| (I.9) | Reserved. | |
| (I.10) | Reserved. | |

| | | |
|---|---|---|
| (I.11) | Reserved. | |
| (I.12) | 52.215–26 | Integrity of Unit Prices. |
| (I.13) | 52.215–33 | Order of Precedence. |
| (I.14) | 52.216–7 | Allowable Cost and Payment. (Modified in accordance with 16.307 as applicable.) |
| (I.15) | Reserved. | |
| (I.16) | Reserved. | |
| (I.17) | Reserved. | |
| (I.18) | Reserved. | |
| (I.19) | 52.222–3 | Convict Labor. |
| (I.20) | 52.222–26 | Equal Opportunity. |
| (I.21) | 52.222–35 | Affirmative Action for Special Disabled and Vietnam Era Veterans. |
| (I.22) | 52.222–36 | Affirmative Action for Handicapped Workers. |
| (I.23) | 52.222–37 | Employment Reports on Special Disabled Veterans and Veterans of the Vietnam Era. |
| (I.24) | 52.223–6 | Drug-Free Workplace. |
| (I.25) | 52.225–11 | Restrictions on Certain Foreign Purchases. |
| (I.26) | 52.227–1 | Authorization and Consent—Alternate I. |
| (I.27) | 52.227–2 | Notice and Assistance Regarding Patent and Copyright Infringement. |
| (I.28) | 52.228–7 | Insurance—Liability to Third Persons. |
| (I.29) | 52.232–9 | Limitation on Withholding of Payments. |
| (I.30) | 52.232–23 | Assignment of Claims. |
| (I.31) | 52.232–25 | Prompt Payment. |
| (I.32) | 52.232–28 | Electronic Funds Transfer Payment Methods. |
| (I.33) | 52.233–1 | Disputes. |
| (I.34) | 52.233–3 | Protest After Award—Alternate I. |
| (I.35) | 52.242–1 | Notice of Intent to Disallow Costs. |
| (I.36) | 52.242–13 | Bankruptcy. |
| (I.37) | 52.244–2 | Subcontracts (Cost-Reimbursement and Letter Contracts) Alternate I. |
| (I.38) | 52.244–5 | Competition in Subcontracting. |
| (I.39) | 52.247–1 | Commercial Bill of Lading Notations. |
| (I.40) | 52.249–14 | Excusable Delays. |
| (I.41) | 52.253–1 | Computer-Generated Forms. |
| *(I.42) | 52.203–9 | Requirement for Certificate of Procurement Integrity-Modification. |
| *(I.43) | 52.203–12 | Limitation on Payments to Influence Certain Federal Transactions. |
| *(I.44) | 52.204–2 | Security Requirements. |
| *(I.45) | 52.204–2 | Security Requirements-Alternate I. (For educational institutions.) |
| *(I.46) | 52.215–22 | Price Reduction for Defective Cost or Pricing Data. |
| *(I.47) | 52.215–23 | Price Reduction for Defective Cost or Pricing Data Modications. |
| *(I.48) | 52.215–24 | Subcontractor Cost or Pricing Data. |
| *(I.49) | 52.215–25 | Subcontractor Cost or Pricing Data-Modifications. |
| *(I.50) | 52.215–27 | Termination of Defined Benefit Pension Plans. (Except educational institutions.) |
| *(I.51) | 52.215–31 | Waiver of Facilities Capital Cost of Money. (Except educational institutions.) |
| *(I.52) | 52.215–39 | Reversion or Adjustment of Plans for Postretirement Benefits Other than Pension (PRB). |
| *(I.53) | 52.216–8 | Fixed Fee. |
| *(I.54) | 52.216–10 | Incentive Fee. |
| *(I.55) | 52.216–11 | Cost Contract—No Fee. |
| *(I.56) | 52.216–11 | Cost Contract—No Fee-Alternate I. |
| *(I.57) | 52.216–12 | Cost-Sharing Contract—No Fee. |
| *(I.58) | 52.216–12 | Cost-Sharing Contract—No Fee-Alternate I. |
| *(I.59) | 52.216–15 | Predetermined Indirect Cost Rates. |
| *(I.59A) | 252.216–7002 | Alternate. (For educational institutions only.) |
| *(I.60) | 52.219–6 | Notice of Total Small Business Set-Aside. |
| *(I.61) | 52.219–6 | Notice of Total Small Business Set-Aside—Alternate I. |
| (I.63) | Reserved. | |
| *(I.64) | 52.219–14 | Limitations on Subcontracting. |
| *(I.65) | 52.219–16 | Liquidated Damages—Small Business Subcontracting Plan. |
| (I.66) | Reserved. | |
| *(I.67) | 52.222–1 | Notice to the Government of Labor Disputes. |
| *(I.68) | 52.222–2 | Payment for Overtime Premiums. |
| *(I.69) | 52.222–28 | Equal Opportunity Preaward Clearance of Subcontracts. |
| *(I.70) | 52.223–2 | Clean Air and Water. |
| *(I.71) | 52.223–3 | Hazardous Material Identification and Material Safety Data. |
| *(I.72) | 52.223–7 | Notice of Radioactive Materials (21 Days). |
| *(I.73) | 52.226–1 | Utilization of Indian Organizations and Indiane-Owned Economic Enterprises. |
| *(I.74) | 52.227–10 | Filing of Patent Applications—Classified Subject Matter. |
| *(I.75) | 52.227–11 | Patent Rights—Retention by the Contractor (Short Form). |
| *(I.76) | 52.227–12 | Patent Rights—Retention by the Contractor (Long Form). |
| *(I.77) | 52.227–13 | Patent Rights—Acquisition by the Government. |
| *(I.78) | 52.228–7 | Insurance—Liability to Third Persons—Alternate I. |
| *(I.79) | 52.228–7 | Insurance—Liability to Third Persons—Alternate II. |
| *(I.80) | 52.229–8 | Taxes—Foreign Cost-Reimbursement Contracts. |
| *(I.81) | 52.229–10 | State of New Mexico Gross Receipts and Compensating Tax. |
| *(I.82) | 52.230–2 | Cost Accounting Standards. (Except if exempted.) |
| *(I.83) | 52.230–3 | Disclosure and Consistency of Cost Accounting Practices. (Except if exempted.) |
| *(I.84) | 52.230–5 | Administration of Cost Accounting Standards. (Except educational institutions.) |
| *(I.85) | 52.232–17 | Interest. |
| *(I.86) | 52.232–20 | Limitation of Cost. |

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| *(I.87) | 52.232–22 | Limitation of Funds. |
| *(I.88) | 52.232–23 | Assignment of Claims—Alternate I. |
| *(I.89) | 52.233–1 | Disputes—Alternate I. |
| *(I.90) | 52.237–2 | Protection of Government Buildings, Equipment and Vegetation. |
| *(I.91) | 52.242–10 | F.O.B. Origin-Government Bills of Lading or Prepaid Postage. |
| *(I.92) | 52.242–11 | F.O.B. Origin-Government Bills of Lading or Indicia Mail. |
| *(I.93) | 52.242–12 | Report of Shipment (REPSHIP). |
| *(I.94) | 52.243–2 | Changes—Cost-Reimbursement-Alternate V. |
| *(I.95) | 52.243–6 | Change Order Accounting. |
| *(I.96) | 52.243–7 | Notification of Changes (30 Calendar Days). |
| *(I.97) | 52.245–5 | Government Property (Cost-Reimbursement, Time-and-Material, or Labor-Hour Contracts). |
| *(I.98) | 52.245–5 | Government Property (Cost-Reimbursement, Time-and-Material, or Labor-Hour Contracts-Alternate I. (For educational institutions and nonprofit organizations.) |
| *(I.99) | 52.245–19 | Government Property Furnished ''As Is''. |
| *(I.100) | 52.246–23 | Limitation of Liability. |
| *(I.101) | 52.246–24 | Limitation of Liability-High Value Items. |
| *(I.102) | 52.246–24 | Limitation of Liability-High Value Items-Alternate I. |
| *(I.103) | 52.246–25 | Limitation of Liability-Services. |
| *(I.104) | 52.247–63 | Preference for U.S.-Flag Air Carriers. |
| *(I.105) | 52.247–66 | Returnable Cylinder. |
| *(I.106) | 52.249–5 | Termination for Convenience of the Government (Educational and Other Nonprofit Institutions). |
| *(I.107) | 52.249–6 | Termination (Cost-Reimbursement). |
| *(I.108) | 52.251–1 | Government Supply Sources. |
| *(I.109) | 252.201–7000 | Contracting Officer's Representative. |
| *(I.110) | 252.203–7001 | Special Prohibition on Employment. |
| *(I.111) | Reserved. | |
| *(I.112) | Reserved. | |
| *(I.113) | 52.204–7003 | Control of Government Personnel Work Product. |
| *(I.114) | 252.209–7000 | Acquisition from Subcontractors Subject to On-Site Inspection under the Intermediate-Range Nuclear Forces (INF) Treaty. |
| *(I.115) | 252.225–7012 | Preference for Certain Domestic Commodities. |
| *(I.116) | 252.225–7031 | Secondary Arab Boycott of Israel. |
| *(I.117) | Reserved. | |
| *(I.118) | Reserved. | |
| *(I.119) | Reserved. | |
| *(I.120) | 252.227–7030 | Technical Data-Withholding of Payment. |
| *(I.121) | 252.227–7037 | Validation of Restrictive Markings on Technical Data. |
| *(I.122) | 252.231–7000 | Supplemental Cost Principles. |
| *(I.123) | 252.232–7006 | Reduction or Suspension of Contract Payments Upon Finding of Fraud. |
| *(I.124) | 252.242–7000 | Postaward Conference. |
| *(I.125) | Reserved. | |
| *(I.126) | 252.247–7023 | Transportation of Supplies by Sea. |
| *(I.127) | 252.203–7000 | Statutory Prohibition on Compensation to Former Department of Defense Employees. |
| *(I.128) | 252.203–7002 | Display of DoD Hotline Poster. |
| *(I.129) | 252.204–7000 | Disclosure of Information. |
| *(I.130) | 252.204–7002 | Payment for Subline Items Not Separately Priced. |
| *(I.131) | 252.205–7000 | Provision of Information to Cooperative Agreement Holders. |
| *(I.132) | 252.215–7000 | Pricing Adjustments. |
| *(I.133) | 252.215–7002 | Cost Estimating System Requirements. |
| *(I.134) | 252.219–7001 | Notice of Partial Small Business Set-Aside with Preferential Consideration for Small Disadvantaged Business Concerns. |
| *(I.135) | 252.219–7002 | Notice of Small Disadvantaged Business Set-Aside. |
| *(I.136) | 252.219–7003 | Small Business and Small Disadvantaged Business Subcontracting Plan (DoD Contracts). |
| *(I.137) | 252.219–7004 | Small Business and Small Disadvantaged Business Subcontracting Plan (Test Program). |
| *(I.138) | 252.219–7005 | Incentive for Subcontracting with Small Businesses, Small Disadvantaged Businesses, Historically Black Colleges and Universities and Minority Institutions. (. . . To be negotiated _____ %.) |
| *(I.139) | 252.219–7005 | Incentive for Subcontracting with Small Businesses, Small Disadvantaged Businesses, Historically Black Colleges and Universities and Minority Institutions-Alternate I. (. . . To be negotiated _____ %.) |
| *(I.140) | 252.219–7006 | Notice of Evaluation Preference for Small Disadvantaged Business Concerns. |
| *(I.141) | 252.223–7001 | Hazard Warning Labels. |
| *(I.142) | 252.223–7002 | Safety Precautions for Ammunitions and Explosives. |
| *(I.143) | 252.223–7003 | Change in Place of Performance-Ammunition and Explosives. |
| *(I.144) | 252.223–7004 | Drug-Free Work Force. |
| *(I.145) | 252.225–7014 | Preference for Domestic Specialty Metals. |
| *(I.146) | 252.225–7016 | Restriction on Acquisition of Antifriction Bearings. |
| *(I.147) | 252.225–7025 | Foregin Source Restrictions. |
| *(I.148) | 252.225–7026 | Reporting of Contract Outside the United States. |
| *(I.149) | 252.225–7032 | Waiver of United Kingdom Levies. |
| *(I.150) | 252.226–7000 | Notice of Historically Black College or University and Minority Institution Set-Aside. |
| *(I.151) | 252.227–7026 | Deferred Delivery of Technical Data or Computer Software. |
| *(I.152) | 252.227–7027 | Deferred Ordering of Technical Data or Computer Software. |
| (I.153) | Reserved. | |
| *(I.154) | 252.227–7034 | Patent—Subcontracts. |

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| *(I.155) | 252.227–7036 | Certification of Technical Data Conformity. |
| *(I.156) | 252.227–7039 | Patents—Reporting of Subject Inventions. |
| (I.157) | Reserved. | |
| *(I.158) | 252.232–7000 | Advance Payment Pool. (For educational institutions and nonprofit organizations.) |
| *(I.159) | 252.233–7000 | Certification of Claims and Requests for Adjustment or Relief. |
| *(I.160) | 252.235–7002 | Animal Welfare. |
| *(I.161) | 252.242–7002 | Submission of Commercial Freight Bills for Audit. |
| *(I.162) | 252.242–7003 | Application for U.S. Government Shipping Documentation/Instructions. |
| *(I.163) | 252.242–7004 | Material Management and Accounting System. |
| *(I.164) | 252.245–7001 | Reports of Government Property. |
| *(I.165) | 252.247–7024 | Notification of Transportation of Supplies by Sea. |
| *(I.166) | 252.249–7001 | Notification of Substantial Impact on Employment. |
| *(I.167) | 252.251–7000 | Ordering From Government Supply Sources. |
| *(I.168) | 252.223–7006 | Prohibition on Disposal of Toxic and Hazardous Materials. |
| *(I.169) | 252.249–7002 | Notification of Program Termination or Reduction. |
| (I.170) | 52.204–4 | Printing/Copying Double-Sided on Recycled Paper. |
| *(I.171) | 52.208–8 | Helium Requirement Forecast and Required Sources for Helium. |
| (I.172) | 52.215–2 | Audit and Records—Negotiation. |
| *(I.173) | 52.215–2 | Audit and Records—Negotiation, Alternate II. |
| (I.174) | 52.215–40 | Notification of Ownership Changes. |
| *(I.175) | 52.215–42 | Requirements for Cost or Pricing Data or Information Other Than Cost or Pricing Data—Modifications. |
| *(I.176) | 52.215–42 | Requirements for Cost or Pricing Data or Information Other Than Cost or Pricing Data—Modifications, Alternate II. |
| *(I.177) | 52.215–42 | Requirements for Cost or Pricing Data or Information Other Than Cost or Pricing Data—Modifications, Alternate III. |
| (I.178) | 52.219–8 | Utilization of Small, Small Disadvantaged and Women-Owned Small Business Concerns. |
| *(I.179) | 52.219–9 | Small, Small Disadvantaged and Women-Owned Small Business Subcontracting Plan. |
| *(I.180) | 52.242–3 | Penalties for Unallowable Costs. |
| (I.181) | 52.242–4 | Certification of Indirect Costs. |
| (I.182) | 52.244–6 | Subcontracts for Commercial Items and Commercial Components. |
| *(I.183) | 52.247–67 | Submission of Commercial Transportation Bills to the General Services Administration for Audit. |
| (I.184) | 52.223–14 | Toxic Chemical Release Reporting. |
| (I.185) | 252.235–7010 | Acknowledgement of Support and Disclaimer. |
| (I.186) | 252.235–7011 | Final Scientific or Technical Report. |
| *(I.187) | 252.227–7013 | Rights in Technical Data—Noncommercial Items. |
| *(I.188) | 252.227–7013 | Rights in Technical Data—Noncommercial Items, Alternate I. |
| *(I.189) | 252.227–7014 | Rights in Noncommercial Computer Software and Noncommercial Computer Software Documentation. |
| *(I.190) | 252.227–7014 | Rights in Nocommercial Computer Software and Noncommercial Computer Software Documentation, Alternate I. |
| *(I.191) | 252.227–7015 | Technical Data—Commercial Items. |
| *(I.192) | 252.227–7016 | Rights in Bid or Proposal Information. |
| *(I.193) | 252.227–7018 | Rights in Noncommercial Technical Data and Computer Software—Small Business Innovation Research Program. |
| *(I.194) | 252.227–7018 | Rights in Noncommercial Technical Data and Computer Software—Small Business Innovation Research Program, Alternate I. |
| *(I.195) | 252.227–7019 | Validation of Asserted Restrictions—Computer Software. |
| *(I.196) | 252.227–7025 | Limitations on the Use or Disclosure of Government-Furnished Information Marked with Restrictive Legends. |
| *(I.197) | 252.209–7005 | Military Recruiting on Campus (For educational institutions only.) |

* * * * * * *

**PART IV—REPRESENTATIONS AND INSTRUCTIONS**

*Section K. Representations, Certifications and Other Statements of Offerors or Quoters*

The following solicitation provisions require representations, certifications or the submission of other information by offerors. They are mandatory, and are included by reference. Full text copies of these provisions are available from the Contracting Officer and must be completed and certified before contract award.

| | | |
|---|---|---|
| (K.1) | 52.203–4 | Contingent Fee Representation and Agreement. |
| (K.2) | 52.203–8 | Requirement for Certificate of Procurement Integrity-Alternate I. |
| (K.3) | 52.203–11 | Certification and Disclosure Regarding Payments to Influence Certain Federal Transactions. |
| (K.4) | 52.204–3 | Taxpayer Identification. |
| (K.5) | 52.209–5 | Certification Regarding Debarment, Suspension, Proposed Debarment, and Other Responsibility Matters. |
| (K.6) | 52.215–6 | Type of Business Organization. |
| (K.7) | 52.215–11 | Authorized Negotiators. |
| (K.8) | 52.215–20 | Place of Performance. |
| (K.9) | 52.215–30 | Facilities Capital Cost of Money (Except educational institutions.) |
| (K.10) | Reserved.. | |
| (K.11) | Reserved.. | |
| (K.12) | Reserved.. | |
| (K.13) | 52.222–21 | Certification of Nonsegregated Facilities. |
| (K.14) | 52.222–22 | Previous Contracts and Compliance Reports. |
| (K.15) | 52.222–25 | Affirmative Action Compliance. |

| | | |
|---|---|---|
| (K.16) | 52.223–1 | Clean Air and Water Certification. |
| (K.17) | 52.223–5 | Certification Regarding a Drug-Free Workplace. |
| (K.18) | 52.227–6 | Royalty Information. |
| (K.19) | 52.230–1 | Cost Accounting Standards Notices and Certification. |
| (K.20) | Reserved.. | |
| (K.21) | 252.209–7002 | Disclosure of Ownership or Control by a Foreign Government. |
| (K.22) | 252.219–7000 | Small Disadvantaged Business Concern Representation (DOD Contracts). |
| (K.23) | Reserved.. | |
| (K.24) | Reserved.. | |
| (K.25) | 252.226–7001 | Hostirically Black College or University and Minority Institution Certification. |
| (K.26) | Reserved.. | |
| (K.27) | 252.247–7022 | Representation of Extent of Transportation by Sea. |
| (K.28) | 52.204–5 | Women-Owned Business. |
| (K.29) | 252.209–7 | Organizational Conflicts of Interest Certificate—Marketing Consultants. |
| (K.30) | 252.219–1 | Small Business Program Representation. |
| (K.31) | 252.223–13 | Certification of Toxic Chemical Release Reporting. |
| (K.32) | 252.209–7001 | Disclosure of Ownership or Control by the Government of a Terrorist Country. |
| (K.33) | 252.209–7003 | Disclosure of Commercial Transactions with the Government of a Terrorist Country. |
| (K.34) | 252.209–7004 | Reporting of Commercial Transactions with the Government of a Terrorist Country. |
| (K.35) | 252.227–7017 | Identification and Assertion of Use, Release, or Disclosure Restrictions. |
| (K.36) | 252.227–7028 | Technical Data or Computer Software Previously Delivered to the Government. |

*Section L. Instructions, Conditions, and Notices to Offerors or Quoters*

| | | |
|---|---|---|
| (L.1) | 52.252–1 | Solicitation Provisions Incorporated by Reference. |
| (L.2) | Reserved.. | |
| (L.3) | 52.210–2 | Availability of Specifications and Standards Listed in the DoD Index of Specifications and Standards (DODISS) and Descriptions Listed in DoD 5010.12–L (Deviation). |
| (L.4) | 52.215–5 | Solicitation Definitions. |
| (L.5) | 52.215–7 | Unnecessarily Elaborate Proposals or Quotations. |
| (L.6) | 52.215–8 | Amendments to Solicitations. |
| (L.7) | 52.215–9 | Submission of Offers. |
| (L.8) | 52.215–10 | Late Submissions, Modifications, and Withdrawals of Proposals. |
| (L.9) | 52.215–12 | Restriction on Disclosure and Use of Data. |
| (L.10) | 52.215–13 | Preparation of Offers. |
| (L.11) | 52.215–14 | Explanation to Prospective Offerors. |
| (L.12) | 52.215–15 | Failure to Submit Offer. |
| (L.13) | 52.215–16 | Contract Award. |
| (L.14) | Reserved.. | |
| (L.15) | 52.216–1 | Type of Contract (See 235.7006(d)(B.1)). |
| (L.16) | 52.222–24 | Preaward On-Site Equal Opportunity Compliance Review. |
| (L.17) | 52.228–6 | Insurance-Immunity from Tort Liability. |
| (L.18) | 52.233–2 | Service of Protest (See 235.7006(d)(A.1)(xvii)). |
| (L.19) | 52.237–1 | Site Visit. |
| (L.20) | 52.252–5 | Authorized Deviations in Provisions. |
| (L.21) | 252.204–7001 | Commercial and Government Entity (CAGE) Code Reporting. |
| (L.22) | Reserved.. | |
| (L.23) | 52.215–16 | Contract Award—Alternate II. |
| *(L.24) | 52.215–41 | Requirements for Cost or Pricing Data or Information Other than Cost or Pricing Data. |
| *(L.25) | 52.215–41 | Requirements for Cost or Pricing Data or Information Other than Cost or Pricing Data, Alternate I. |
| *(L.26) | 52.215–41 | Requirements for Cost or Pricing Data or Information Other than Cost or Pricing Data, Alternate II. |
| *(L.27) | 52.215–41 | Requirements for Cost or Pricing Data or Information Other than Cost or Pricing Data, Alternate III. |
| *(L.28) | 52.215–41 | Requirements for Cost or Pricing Data or Information Other than Cost or Pricing Data, Alternate IV. |

(L.29 through L.100) Reserved.

(L.101) Government-Furnished Property.

No material, labor, or facilities will be furnished by the Government unless provided for in the solicitation.

(L.102) Proposal Preparation and Submission Instructions.

(i) *Page limitation, format.*

(A) A proposal shall be prepared in separate volumes with the page limit and number of copies specified below. The table of contents and tabs are exempt from the page limits. No cross-referencing between volumes for essential information is permitted except where specifically set forth herein. The following volumes of material will be submitted:

| Title | Copies | Maximum page limits |
|---|---|---|
| Cost ..... | As specified in solicitation summary. | *50 |
| Technical ..... | As specified in solicitation summary. | 100 |

*The 50-page cost proposal is a goal not a limit. The Contractor may use additional pages if necessary to comply with public law.

(B) Any technical proposal pages submitted which exceed the page limitations set forth above will not be read or evaluated. Proposal pages failing to meet paragraph D format will not be read or evaluated.

(C) No program cost data or cross-reference to the cost proposal will be included in any other volume.

(D) Format of the above proposal volumes shall be as follows:

*(1)* Proposals will be prepared on 8½×11 inch paper except for foldouts used for charts, tables, or diagrams, which may not exceed 11×17 inches. Foldouts will not be used for text. Pages will have a one inch margin.

*(2)* A page is defined as one face of a sheet of paper containing information. Two pages may be printed on one sheet.

*(3)* Type size will be no smaller than 10 point character height (vertical size) and no more than an average 12 characters per inch. Use of type-setting techniques to reduce type size below 10 points or to increase characters beyond 12 per inch is not permitted. Such techniques are construed as a deliberate attempt to circumvent the intent of page limitations set forth above.

*(4)* Proposal must lie flat when open, elaborate binding is not desirable.

*(5)* No models, mockups or video tapes will be accepted.

*(6)* Technical proposals will be prepared in the same sequence as the statement of work.

(ii) *Content.*

All proposals must be complete and respond directly to the requirements of the solicitation. The factors and subfactors listed in Section M of the solicitation shall be addressed. Cost and supporting data shall be included only in the cost volume. All other information shall be included in the technical volume.

* * * * *

## PART 236—CONSTRUCTION AND ARCHITECT-ENGINEER CONTRACTS

36. Section 236.201 is amended by revising paragraph (a) to read as follows:

**236.201 Evaluation of contractor performance.**

(a) *Preparation of performance evaluation reports.* Use DD Form 2626, Performance Evaluation (Construction), instead of SF 1420.

* * * * *

37. Section 236.204 is added to read as follows:

**236.204 Disclosure of the magnitude of construction projects.**

Additional price ranges are—

(i) Between $10,000,000 and $25,000,000;

(ii) Between $25,000,000 and $100,000,000;

(iii) Between $100,000,000 and $250,000,000;

(iv) Between $250,000,000 and $500,000,000; and

(v) Over $500,000,000.

38. Section 236.271 is revised to read as follows:

**236.271 Cost-plus-fixed-fee contracts.**

Annual military construction appropriations acts restrict the use of cost-plus-fixed-fee contracts (see 216.306(c)).

39. Section 236.604 is amended by adding paragraph (a) introductory text to read as follows:

**236.604 Performance evaluation.**

(a) *Preparation of performance reports.* Use DD Form 2631, Performance Evaluation (Architect-Engineer), instead of SF 1421.

(2) * * *

* * * * *

## PART 242—CONTRACT ADMINISTRATION

40. Section 242.203 is amended by removing at the end of paragraph (a)(i)(P) the word ''and''; by removing at the end of paragraph (a)(i)(Q) the period and adding a semicolon and the word ''and''; by revising paragraph (a)(ii); by removing paragraph (a)(iii); and by redesignating paragraphs (a)(iv) and (a)(v) as (a)(iii) and (a)(iv) respectively. The revision reads as follows:

**242.203 Retention of contract administration.**

(a)(i) * * *

(ii) Contract administration functions for base, post, camp, and station contracts on a military installation are normally the responsibility of the installation or tenant commander. However, the Defense Contract Management Command (DCMC) shall, upon request of the military department, and subject to prior agreement, perform contract administration services on a military installation.

* * * * *

## PART 246—QUALITY ASSURANCE

41. Section 246.770–2 is amended by redesignating paragraphs (b) and (c) as paragraphs (c) and (d) respectively; by adding a new paragraph (b); and by revising the newly designated paragraph (c) to read as follows:

**246.770–2 Policy.**

(a) * * *

(b) Contracting officers and program managers shall consider the following when developing and negotiating weapon system warranty provisions:

(1) Warranties may not be appropriate in all situations, and a waiver should be sought if a warranty would not be cost-effective or would otherwise be inconsistent with the national defense. In drafting warranty provisions, the drafters must ensure they understand the planned operational, maintenance, and supply concepts of the weapon system to be fielded, and must structure a warranty that matches those concepts. A warranty plan should be prepared in consonance with development of the warranty provision early in the weapon system's life cycle. The plan should contain program warranty strategy, terms of the warranty, administration and enforcement requirements, and should be coordinated with the user and support activities.

(2) A cost/benefit analysis must be accomplished in support of each warranty (see 246.770–7). The cost/benefit analysis compares all costs associated with the warranty to the expected benefits. An estimate shall be made of the likelihood of defects and the estimated cost of correcting such defects. Also, if substantive changes are required to the planned operational, maintenance, or supply concepts, any increased costs should be weighed against the expected benefits in deciding whether a warranty is cost-effective.

(3) The Warranty Guidebook prepared by the Defense Systems Management College, Fort Belvoir, VA 22060–5426, is a valuable reference that can assist in the development, negotiation, and administration of an effective weapon system warranty.

(c) Contracting officers may require warranties that provide greater coverage and remedies than specified in paragraph (a) of this subsection.

* * * * *

42. Section 246.770–8 is amended by revising the introductory text of paragraph (a); by removing paragraph (b)(2); by redesignating paragraph (b)(3) as paragraph (b)(2), and by revising the introductory text of paragraphs (c) and (c)(2). The revised text reads as follows:

**246.770–8 Waiver and notification procedures.**

(a) The Secretary of Defense has delegated waiver authority within the limits specified in 10 U.S.C. 2403. The waiving authority for the defense agencies is the Under Secretary of Defense (Acquisition and Technology). Submit defense agency waiver requests to the Director, Defense Procurement, for processing. The waiving authority for the military departments is the Secretary of the department with authority to redelegate no lower than an Assistant Secretary. The waiving authority may waive one or more of the weapon system warranties required by 246.770–2 if—

* * * * *

(c) Departments and agencies shall issue procedures for processing waivers and notifications to Congress.

(1) * * *

(2) Notifications shall include—

* * * * *

## PART 252—SOLICITATION PROVISIONS AND CONTRACT CLAUSES

43. Section 252.209–7005 is amended by revising the clause date to read ''(FEB 1996)''; and by revising paragraph (b) to read as follows:

**252.209–7005 Military recruiting on campus.**

* * * * *

(b) *General.* An institution of higher education that has been determined, using procedures established by the Secretary of Defense at 32 CFR part 216: (1) to have a policy of denying, or (2) to effectively prevent the Secretary of Defense from obtaining for military recruiting purposes, entry to such institution's campuses, access to students on those campuses, or access to directory information pertaining to its students, is ineligible for contract award and payments under existing contracts. In addition, the Government shall terminate this contract for the Contractor's material failure to comply with the terms and conditions of award.

* * * * *

44. Section 252.217–7027 is revised to read as follows:

**252.217–7027 Contract Definitization.**

As prescribed in 217.7406(b), use the following clause:

**CONTRACT DEFINITIZATION (FEB 1996)**

(a) A _____*(insert specific type of contract action)* is contemplated. The Contractor agrees to begin promptly negotiating with the Contracting Officer the terms of a definitive contract that will include (1) all clauses required by the Federal Acquisition Regulation (FAR) on the date of execution of the underfinitized contract action, (2) all clauses required by law on the date of execution of the definitive contract action, and (3) any other mutually agreeable clauses, terms, and conditions. The Contractor agrees to submit a _____*(insert type of proposal; e.g., fixed-price or cost-and-fee)* proposal and cost or pricing data supporting its proposal.

(b) The schedule for definitizing this contract is as follows (*insert target date for definitization of the contract action and dates for submission of proposed, beginning of negotiations, and, if appropriate, submission of the make-or-buy and subcontracting plans and cost or pricing data).*

_____

_____

_____

_____

(c) If agreement on a definitive contract action to supersede this undefinitized contract action is not reached by the target date in paragraph (b) of this clause, or within any extension of it granted by the Contracting Officer, the Contracting Officer may, with the approval of the head of the contracting activity, determine a reasonable price or fee in accordance with subpart 15.8 and part 31 of the FAR, subject to Contractor appeal as provided in the Disputes clause. In any event, the Contractor shall proceed with completion of the contract, subject only to the Limitation of Government Liability clause.

(1) After the Contracting Officer's determination of price or fee, the contract shall be governed by—

(i) All clauses required by the FAR on the date of execution of this underfinitized contract action for either fixed-price or cost-reimbursement contracts, as determined by the Contracting Officer under this paragraph (c);

(ii) All clauses required by law as of the date of the Contracting Officer's determination; and

(iii) Any other clauses, terms, and conditions mutually agreed upon.

(2) To the extent consistent with paragraph (c)(1) of this clause, all clauses, terms, and conditions included in this undefinitized contract action shall continue in effect, except those that by their nature apply only to an undefinitized contract action.

(d) The definitive contract resulting from this undefinitized contract action will include a negotiated _____ *(insert ''cost/price ceiling'' or ''firm-fixed price'')* in no event to exceed _____ *(insert the not-to-exceed amount).*

(End of clause)

45. Section 252.223–7007 is added to read as follows:

**252.223–7007 Safeguarding Sensitive Conventional Arms, Ammunition, and Explosives.**

As prescribed in 223.7203, use the following clause:

Safeguarding Sensitive Conventional Arms, Ammunition, and Explosives (Feb. 1996)

(a) Definition.

''Arms, ammunition, and explosives (AA&E),'' as used in this clause, means those items within the scope (chapter 1, paragraph B) of DoD 5100.76–M, Physical Security of Sensitive Conventional Arms, Ammunition, and Explosives.

(b) The requirements of DoD 5100.76–M apply to the following items of AA&E being developed, produced, manufactured, or purchased for the Government, or provided to the Contractor as Government-furnished property under this contract:

| Nomenclature | National stock number | Sensitivity category |
|---|---|---|
| | | |

(c) The Contractor shall comply with the requirements of DoD 5100.76–M, as specified in the statement of work. The edition of DoD 5100.76–M in effect on the date of issuance of the solicitation for this contract shall apply.

(d) The Contractor shall allow representatives of the Defense Investigative Service (DIS), and representatives of other appropriate offices of the Government, access at all reasonable times into its facilities and those of its subcontractors, for the purpose of performing surveys, inspections, and investigations necessary to review compliance with the physical security standards applicable to this contract.

(e) The Contractor shall notify the cognizant DIS field office of any subcontract involving AA&E within 10 days after award of the subcontract.

(f) The Contractor shall ensure that the requirements of this clause are included in all subcontracts, at every tier—

(1) For the development, production, manufacture, or purchase of AA&E; or

(2) When AA&E will be provided to the subcontractor as Government-furnished property.

(g) Nothing in this clause shall relieve the Contractor of its responsibility for complying with applicable Federal, state, and local laws, ordinances, codes, and regulations (including requirements for obtaining licenses and permits) in connection with the performance of this contract.

(End of clause)

**252.228–7006 [Removed and Reserved]**

46. Section 252.228–7006 is removed and reserved.

**252.232–7004 [Amended]**

47. Section 252.232–7004 is amended by revising the clause date to read ''(FEB 1996)'' and by revising in paragraph (a), in the parenthetical phrase, the word

''excepting'' to read ''including'' and the phrase ''Undefinitized Actions'' to read ''Undefinitized Contract Actions.''

## PART 253—FORMS

48. Section 253.213–70 is amended by revising paragraph (e)(14) to read as follows:

**253.213–70— Instructions for completion of DD Form 1155**

* * * * *

(e) * * *

14 *SHIP TO—*

If a single ship-to point applies to the entire order, enter the name and address of that point in this block and a DODAAD code in the code block. For FMS shipments, enter the MAPAD code in the code block and an instruction for the contractor to contact the transportation office of the administering activity to obtain a name and shipping address. Enter multiple ship-to points in the schedule and mark this block, ''See Schedule.''

* * * * *

49. At the end of Part 253 ''253.303–2626, Performance Evaluation (construction)'' and ''253.303–2631, Performance Evaluation (Architect-Engineer)'' are added to the DFARS Form List.

*Appendix G to Chapter 2 [Amended]*

50–51. Appendix G to Chapter 2, Part 3, Navy Activity Address Numbers, is amended by revising activity address numbers N00019, N00023, N00024, N00030, N00039, N00104, N00383, and by adding activity address number N00391 to read as follows:

Appendix G—Activity Address Numbers

* * * * *

## PART 3—NAVY ACTIVITY ADDRESS NUMBERS

* * * * *

N00019—Naval Air Systems Command
EF*, GU*—1421 Jefferson Davis Highway
EF0–9—Arlington, VA 22243–5120
* * * * *
N00023—Naval Supply Systems Command
4J*, L5*—1931 Jefferson Davis Highway
4J0–9—Arlington, VA 22241–5360
N00024—Naval Sea Systems Command
EH*, U0*—2531 Jefferson Davis Highway
EH0–9—Arlington, VA 22242–5160
* * * * *
N00030—Strategic Systems Programs
EK*—1931 Jefferson Davis Highway
EK0–9—Arlington, VA 22241–5362
* * * * *
N00039—Space and Naval Warfare Systems Command
NS*—2451 Crystal Drive
NS0–9—Arlington, VA 22245–5200
* * * * *
N00104—Naval Inventory Control Point
EP—5450 Carlisle Pike
EQ—Box 2020, Mechanicsburg, PA 17055–0788
* * * * *
N00383—Naval Inventory Control Point
GB—700 Robbins Avenue
GC—Philadelphia, PA 19111–5098
* * * * *
N00391—Naval Inventory Control Point
EP, EQ,—700 Robbins Avenue
GB, GC—Philadelphia, PA 19111–5098
* * * * *

52. Appendix G to Chapter 2, Part 4, Marine Corps Activity Address Numbers, is amended by revising activity number M67854 to read as follows:

## PART 4—MARINE CORPS ACTIVITY ADDRESS NUMBERS

* * * * *

M67854—Marine Corps Systems Command
(MAJ00027)—2033 Barnett Ave, Suite 315
MU6–9—Quantico, VA 22134–5010
* * * * *

53. Appendix G, Chapter 2, Part 10, Miscellaneous Defense Activities Activity Address Numbers, is amended by revising activity number MDA946 to read as follows:

## PART 10—MISCELLANEOUS DEFENSE ACTIVITIES ACTIVITY ADDRESS NUMBERS

* * * * *

MDA946—Real Estate and Facilities Directorate, Washington headquarters Services, 1155 Defense Pentagon, room 3C345, Washington, DC 20301–1155

* * * * *

[FR Doc. 96–4480 Filed 2–28–96; 8:45 am]
BILLING CODE 5000–04–M

## DEPARTMENT OF COMMERCE

### National Oceanic and Atmospheric Administration

### 50 CFR Part 641

**[Docket No. 951221305–6038–02; I.D. 020296B]**

### Reef Fish Fishery of the Gulf of Mexico; Revised 1996 Red Snapper Season

**AGENCY:** National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

**ACTION:** Emergency interim rule.

**SUMMARY:** NMFS issues this emergency interim rule to suspend implementation of the red snapper individual transferable quota (ITQ) system for the Gulf of Mexico, previously scheduled to begin April 1, 1996, to make the entire 1996 commercial quota for red snapper available to the fishery which opened February 1, 1996, and to extend for the emergency period the red snapper trip limit and permit endorsement system. The intended effect is to respond to an emergency situation involving the commercial red snapper fishery by preventing adverse social and economic impacts on fishery participants while allowing a controlled harvest of fish for the 1996 season.

**EFFECTIVE DATES:** The amendments to §§ 641.7 paragraphs (nn) through (pp) and 641.31 through 641.33 are effective February 23, 1996, through May 29, 1996.

The removal of §§ 641.34 and 641.7 paragraph (qq) is effective February 23, 1996.

The April 1, 1996, effective date for the amendments to part 641 listed in amendatory instruction 2 are delayed indefinitely.

**ADDRESSES:** Copies of documents supporting this action, including an environmental assessment, may be obtained from Robert Sadler, Southeast Regional Office, NMFS, 9721 Executive Center Drive N., St. Petersburg, FL 33702.

**FOR FURTHER INFORMATION CONTACT:** Robert Sadler, 813–570–5305.

**SUPPLEMENTARY INFORMATION:** The reef fish fishery of the Gulf of Mexico is managed under the Fishery Management Plan for the Reef Fish Resources of the Gulf of Mexico (FMP). The FMP was prepared by the Gulf of Mexico Fishery Management Council (Council) and is implemented through regulations at 50 CFR part 641 under the authority of the Magnuson Fishery Conservation and Management Act (Magnuson Act).

Delayed Opening of the 1996 Commercial Red Snapper Fishery

Under the provisions of an emergency interim rule (61 FR 17, January 2, 1996), requested by the Council and issued by NMFS, (1) the opening of the 1996 red snapper commercial fishery was delayed from January 1 until February 1, 1996; (2) an interim commercial quota of 1.00 million lb (0.45 million kg) was established for the period February 1 through March 31, 1996; and (3) the red snapper trip limit and vessel permit endorsement system was continued

through March 31, 1996. These measures were intended to allow a controlled commercial fishery for red snapper during the Lenten season, when demand for fish is high, prior to implementation of the ITQ system on April 1, 1996. (The ITQ system was contained in Amendment 8 to the FMP and was published as a final rule on November 29, 1995 (60 FR 61200). Some paragraphs in that final rule pertaining to the ITQ system were recodified in the final rule to implement Amendment 11 (60 FR 64350, December 15, 1995). Accordingly, this emergency interim rule contains references to both of those final rules.)

In its request for these emergency management measures, the Council expressed its intent that should the ITQ system be disapproved by NMFS or its implementation be delayed by Congressional action (e.g., proposed Congressional moratoriums on ITQ systems), then the commercial fishery should remain open until the full annual commercial quota is taken under the red snapper trip limit and endorsement system that was in effect during 1995.

Delay in the Implementation of the ITQ System

Because of the furlough of NMFS personnel in late December 1995 and early January 1996 and budget limitations under the continuing resolution that provides operating funds for the Department of Commerce, NMFS is unable to implement the red snapper ITQ system by April 1, 1996. As a result of the furlough, NMFS was unable to process fishermen's requests for appeals of NMFS' initial determinations regarding historical captain status and red snapper landings records. Final determinations through the appeals process are essential to establish finally who will be initial shareholders in the ITQ system and the amounts of their initial shares. In addition, NMFS concluded that it would be unreasonable to expect red snapper fishermen to pursue their appeals before the Council Appeals Board during February 1996 when the commercial red snapper fishery is open and fishermen are busy with harvesting operations. Under the provisions of Amendment 8 and its implementing rule, the appeals process must be completed before NMFS can issue red snapper ITQ shares and coupons.

Period of Suspension

NMFS issues this emergency interim rule, effective initially for 90 days after its date of publication, as authorized by section 305(c) of the Magnuson Act. Should NMFS and the Council agree, this emergency interim rule may be extended for an additional period of 90 days. If the commercial quota for red snapper, currently 3.06 million pounds (1.39 million kg), has not been taken during the initial 90 days, such agreement and extension are expected. Since the entire commercial quota for 1996 is likely to have been taken under this emergency interim rule, or extension thereof, the earliest date that the ITQ system could begin operation is January 1, 1997 (beginning of a new fishing year), unless the 1996 commercial quota is increased through a separate regulatory action and the appeals process is completed.

Red Snapper Trip Limit and Endorsement System

This rule extends for the emergency period the management regime for red snapper that was in effect for the 1995 fishing year and was previously extended by the January 2 emergency rule. Specifically, landings of red snapper are limited to 2,000 lb (907 kg) per trip or day for vessels with red snapper endorsements on their reef fish permits; other reef fish permitted vessels are limited to 200 lb (91 kg) per trip or day. These measures are intended to spread out harvest over a longer period of time and avoid the negative social and economic impacts and potentially dangerous fishing conditions that would result from a derby fishery of very short duration. Monitoring of landings under an uncontrolled derby fishery would be difficult, increasing the likelihood that the quota would be exceeded. This might result in adverse effects on the recovery of the overfished red snapper resource. Red snapper permit endorsements that were in effect on December 31, 1995, have been reissued by NMFS for the 1996 fishing year.

Compliance with NMFS Guidelines for Emergency Rules

This emergency interim rule meets NMFS' policy guidelines for the use of emergency rules, published on January 6, 1992 (57 FR 375). The situation (1) results from recent, unforeseen events or recently discovered circumstances; (2) presents a serious management problem; and (3) realizes immediate benefits from the emergency interim rule that outweigh the value of prior notice, opportunity for public comment, and deliberative consideration expected under the normal rulemaking process.

Recent, Unforeseen Events or Recently Discovered Circumstances

The furlough of NMFS personnel and curtailed agency operating funds under temporary funding bills (''continuing resolutions''), and the effects on NMFS' ability to carry out the provisions of Amendment 8 and its implementing rule, were unforeseen. As a result of the furlough, the Southeast Regional Office was unable to process the requests for appeals of its initial determinations regarding historical captain status and landings records in a timely manner. The appeals process must be completed before NMFS can issue red snapper ITQ shares and coupons.

Serious Management Problems in the Fishery

NMFS believes that this emergency interim rule is necessary to address serious management problems with the fishery, which if unaddressed, could cause significant adverse social and economic impacts on fishery participants.

If the combined emergency actions of the immediate availability of the entire 1996 red snapper commercial quota and the suspension of the ITQ system are not taken, then the commercial fishery would have to be closed for an indefinite period after the interim 1.00–million lb (0.45–million kg) quota is harvested. Since this closure would extend significantly beyond April 1, 1996, it would have severe negative economic effects, particularly for commercial fishermen who had planned to participate in the fishery under the ITQ program commencing April 1.

Making the entire 1996 red snapper commercial quota immediately available for harvest under the trip limit and endorsement system has the effect of returning the red snapper management regime for this year to the regime that was in place from 1993 through 1995 under provisions of the FMP. This regime released the entire annual commercial quota at the start of the fishing season, which was timed to ensure that the fishery was open during Lent. The fishery remained open, under the vessel permit endorsement and trip limit program, until the quota was caught (usually sometime in April of each year). This management approach, while still presenting fishery problems intended to be addressed through the ITQ system, was based on the Council's and NMFS' determination that it offered greater social and economic benefits than provided by a split season or by a less restrictive harvest rate. The expected benefits of this emergency rule are the same as those intended from the

previous management regime; they are described as follows.

Traditionally, consumer demand for fresh red snapper is significantly higher during the Lenten season (February through March) than the rest of the year. The result is that the prices to fishermen for their catch are higher at this time than later in the year. Consequently, gross revenues to fishermen from taking the remaining commercial quota now are significantly higher (although difficult to quantify) than if these fish were caught later this year. As such, fishermen would suffer substantial economic loss if they were unable to continue fishing during this early spring period.

A continuous commercial red snapper season in the Gulf in recent years has avoided or minimized market disruptions in the supply of fresh, high quality, fish. In the past, these market disruptions in the supply of fresh fish have been shown to have negative effects on fishermen's incomes. For example, without a steady supply of fresh fish, dealers turn to cheaper, frozen imports to satisfy the consumer demand; the result can include temporarily depressed prices and short-term losses of market share for fresh fish until the dealers exhaust their inventories of frozen product. Also, an unstable domestic supply of red snapper usually results in wider fluctuations in ex-vessel prices for the same quality of product.

Another benefit of a continuous season is minimizing the time and economic costs to fishermen associated with their changing fisheries. For example, if the red snapper fishery is opened, closed, and then reopened, it would require additional effort and costs for vessel owners to change fishing gear, related supplies, and crew each time they entered or left the snapper fishery. Also, since the red snapper fishery is considered more lucrative than most of the alternative fisheries, fishermen would make every effort to reenter this fishery when it opens, even after Lent. During a disrupted red snapper season, there are added difficulties of finding and keeping experienced, reliable crew. In summary, these additional costs/efforts required to fish for red snapper during a disrupted season can be particularly burdensome for a given vessel owner.

Finally, a discontinuous red snapper commercial fishery with a reopening during late spring/early summer would require fishermen to forego their normal deeper water fisheries during that time (e.g., tilefish, snowy grouper, and tuna). In order to make a livelihood, most fishermen participate in several fisheries during the course of the year, and accordingly follow long established seasonal patterns of changing fisheries. The red snapper fishery is more readily prosecuted in late winter/early spring because the fish are located in near-shore, shallower water areas, where they are more concentrated than later in the year. There are also distinct safety benefits of being able to fish near shore during the bad weather that is common in winter and early spring. Other fisheries, particularly the deep water grouper fishery, are more readily prosecuted during late spring/early summer when weather conditions are more consistent and relatively better. A split commercial red snapper season during 1996 would disrupt these traditional fishing patterns without any compensatory benefits.

Without the red snapper endorsement system, which includes vessel trip limits, permitted vessels would have no restrictions on landing levels. This would result in a derby fishery of very short duration. Monitoring of landings under these conditions would be difficult, increasing the likelihood that the quota would be exceeded. NMFS is concerned that this would adversely impact stock recovery. In addition, fishermen would suffer significant economic losses due to lower ex-vessel prices, as occurred in fishing years before the endorsement and trip limit provisions were implemented. To avoid these problems, this emergency interim rule continues the trip limits, which will constrain vessel landings to the commercial quota, provide for better prices to fishermen, and increase the short-term economic yield in the fishery.

Immediate Benefits

The immediate benefits of the emergency interim rule greatly outweigh the value of prior notice and opportunity for public comment which would occur under normal rulemaking.

Effect of this Emergency Interim Rule on Existing Regulations

The emergency interim rule published on January 2, 1996 (61 FR 17) is superseded by this emergency interim rule.

Classification

The Assistant Administrator for Fisheries, NOAA (AA), has determined that this rule is necessary to respond to an emergency situation and is consistent with the Magnuson Act and other applicable law.

The AA finds that failure to implement the actions in this emergency interim rule would result in negative social and economic impacts described above and lead to fishing under potentially dangerous conditions. In addition, the uncontrolled harvest that would occur without these actions could contribute to overfishing of red snapper. The foregoing constitutes good cause to waive the requirement to provide prior notice and the opportunity for public comment, pursuant to authority set forth at 5 U.S.C. 553(b)(B), as such procedures would be contrary to the public interest. Similarly, the need to implement these measures in a timely manner to address the economic emergency and public safety considerations constitutes good cause under 5 U.S.C. 553(d)(3) to waive the 30-day delay in effectiveness.

This emergency interim rule has been determined to be significant for purposes of E.O. 12866, and has been reviewed and cleared by the Office of Management and Budget.

This emergency interim rule is exempt from the procedures of the Regulatory Flexibility Act because this rule is not required to be issued with prior notice and opportunity for public comment.

List of Subjects in 50 CFR Part 641

Fisheries, Fishing, Reporting and recordkeeping requirements.

Dated: February 21, 1996.

Gary Matlock,

*Program Management Officer, National Marine Fisheries Service.*

For the reasons set out in the preamble, 50 CFR part 641 is amended as follows:

## PART 641—REEF FISH FISHERY OF THE GULF OF MEXICO

1. The authority citation for part 641 continues to read as follows:

Authority: 16 U.S.C. 1801 *et seq.*

**§§ 641.1, 641.4, 641.5, 641.7, 641.10, 641.24 [Amended]**

2. The April 1, 1996, effective date of the following amendments is delayed indefinitely:

a. In § 641.1, the revision of paragraph (b), published November 29, 1995 (60 FR 61206).

b. In § 641.4, the revision to the third sentence of paragraph (i), published November 29, 1995 (60 FR 61207); and the revision to the first sentence of paragraph (a)(4) and the addition of paragraph (o), published December 15, 1995 (60 FR 64354).

c. In § 641.5, redesignation of paragraph (d)(3) as paragraph (d)(4), revision of paragraph (d)(2), and addition of paragraph (d)(3), published November 29, 1995 (60 FR 61207).

d. In § 641.7, revisions of paragraphs (g), (r), and (bb), published November 29, 1995 (60 FR 61207) and the superseding revisions published December 15, 1995 (60 FR 64354); and addition of paragraphs (ff) through (kk), published November 29, 1995 (60 FR 61207). [Note: The first revision to 641.7(bb) published on November 29, 1995 became effective January 1, 1996, and remains in effect.]

e. In § 641.10, addition of introductory text and paragraphs (a) and (b), published November 29, 1995 (60 FR 61207)

f. In § 641.24, redesignation of paragraphs (a)(2) and (a)(3) as paragraphs (a)(3) and (a)(4), respectively, revision of the reference in newly redesignated paragraph (a)(4), and addition of paragraph (a)(2), published on November 29, 1995 (60 FR 61209).

3. In § 641.7, paragraph (qq) is removed and paragraphs (nn) through (pp) are revised to read as follows. Paragraphs (nn) through (pp) are effective through May 29, 1996.

**§ 641.7 Prohibitions.**

* * * * *

(nn) Exceed the vessel trip or landing limits for red snapper, as specified in § 641.31(a) and (b).

(oo) Transfer a red snapper at sea, as specified in § 641.31(c).

(pp) Purchase, barter, trade, or sell, or attempt to purchase, barter, trade, or sell, a red snapper possessed or landed in excess of a trip or landing limit, as specified in § 641.31(d).

**§ 641.34 [Removed]**

4. Section 641.34 is removed.

4a. Sections 641.31 through 641.33 are revised to read as follows. Sections 641.31 through 641.33 are effective through May 29, 1996.

**§ 641.31 Red snapper trip limits.**

(a) Except as provided in paragraph (b) of this section, a vessel that has on board a valid commercial reef fish permit may not possess on any trip or land in any day red snapper in excess of 200 lb (91 kg), whole or eviscerated.

(b) A vessel that has on board a valid commercial reef fish permit and a valid red snapper endorsement may not possess on any trip or land in any day red snapper in excess of 2,000 lb (907 kg), whole or eviscerated.

(c) A red snapper may not be transferred at sea from one vessel to another.

(d) No person may purchase, barter, trade, or sell, or attempt to purchase, barter, trade, or sell, a red snapper possessed or landed in excess of the trip or landing limits specified in paragraphs (a) and (b) of this section.

**§ 641.32 Red snapper endorsement.**

(a) As a prerequisite for exemption from the trip limit for red snapper specified in § 641.31(a), a vessel for which a commercial reef fish permit has been issued under § 641.4 must have a red snapper endorsement on such permit and such permit and endorsement must be aboard the vessel.

(b) A red snapper endorsement is invalid upon sale of the vessel; however, an owner of a vessel with a commercial reef fish permit may transfer the red snapper endorsement to another vessel with a commercial reef fish permit owned by the same entity by returning the existing endorsement with an application for an endorsement for the replacement vessel.

(c) The provisions of paragraph (b) of this section notwithstanding, special provisions apply in the event of the disability or death of the owner of a vessel with a red snapper endorsement or the disability or death of an operator whose presence aboard the vessel is a condition for the validity of a red snapper endorsement.

(1) In the event that a vessel with a red snapper endorsement has a change of ownership that is directly related to the disability or death of the owner, the Regional Director may issue a red snapper endorsement, temporarily or permanently, with the commercial reef fish permit that is issued for the vessel under the new owner. Such new owner will be the person specified by the owner or his/her legal guardian, in the case of a disabled owner, or by the will or executor/administrator of the estate, in the case of a deceased owner. (Change of ownership of a vessel with a commercial reef fish permit upon disability or death of an owner is considered a purchase of a permitted vessel and § 641.4(m)(3) applies regarding a commercial reef fish permit for the vessel under the new owner.)

(2) In the event of the disability or death of an operator whose presence aboard a vessel is a condition for the validity of a red snapper endorsement, the Regional Director may revise and reissue an endorsement, temporarily or permanently, to the permitted vessel. Such revised endorsement will contain the name of a substitute operator specified by the operator or his/her legal guardian, in the case of a disabled operator, or by the will or executor/administrator of the estate, in the case of a deceased operator. As was the case with the replaced endorsement, the presence of the substitute operator aboard and in charge of the vessel is a condition for the validity of the revised endorsement. Such revised endorsement will be reissued only with the concurrence of the vessel owner.

**§ 641.33 Condition of a permit.**

As a condition of a commercial reef fish permit issued under § 641.4, without regard to where red snapper are harvested or possessed, a vessel with such permit—

(a) May not exceed the appropriate vessel trip or landing limit for red snapper, as specified in § 641.31(a) and (b); and

(b) May not transfer a red snapper at sea, as specified in § 641.31(c).

[FR Doc. 96–4432 Filed 2–23–96; 11:41 am]

BILLING CODE 3510–22–F

## 50 CFR Part 675

**[Docket No. 960129019–6019–01; I.D. 022396C]**

## Groundfish of the Bering Sea and Aleutian Islands Area; Offshore Component Pollock in the Bering Sea Subarea

**AGENCY:** National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

**ACTION:** Closure.

**SUMMARY:** NMFS is prohibiting directed fishing for pollock by vessels catching pollock for processing by the offshore component in the Bering Sea subarea (BS) of the Bering Sea and Aleutian Islands management area (BSAI). This action is necessary to prevent exceeding the first seasonal allowance of the pollock total allowable catch (TAC) apportioned to vessels harvesting pollock for processing by the offshore component in the BS.

**EFFECTIVE DATE:** 12 noon, Alaska local time (A.l.t.), February 26, 1996, until 12 noon, A.l.t., April 15, 1996.

**FOR FURTHER INFORMATION CONTACT:** Mary Furuness, 907–586-7228.

**SUPPLEMENTARY INFORMATION:** The groundfish fishery in the BSAI exclusive economic zone is managed by the NMFS according to the Fishery Management Plan for the Groundfish Fishery of the Bering Sea and Aleutian Islands Area (FMP) prepared by the North Pacific Fishery Management Council under authority of the Magnuson Fishery Conservation and Management Act. Fishing by U.S. vessels is governed by regulations implementing the FMP at 50 CFR parts 620 and 675.

In accordance with § 675.20(a)(7)(ii), the first seasonal allowance of pollock

for vessels catching pollock for processing by the offshore component in the BS was established by the Final 1996 Harvest Specifications of Groundfish (61 FR 4311, February 5, 1996) as 295,864 metric tons (mt).

The Director, Alaska Region, NMFS (Regional Director), has determined in accordance with § 675.20(a)(8), that the first seasonal allowance of pollock TAC for vessels catching pollock for processing by the offshore component in the BS soon will be reached. Therefore, the Regional Director has established a directed fishing allowance of 273,864 mt with consideration that 22,000 mt will be taken as incidental catch in directed fishing for other species in the BS. Consequently, NMFS is prohibiting directed fishing for pollock by vessels catching pollock for processing by the offshore component in the BS. This closure is effective 12 noon, February 26, 1996, until 12 noon, A.l.t., April 15, 1996. Under § 675.20(a)(2)(ii), the second seasonal allowance will become available 12 noon, A.l.t., August 15 through the end of the fishing year.

Maximum retainable bycatch amounts for applicable gear types may be found in the regulations at § 675.20(h).

Classification

This action is taken under § 675.20 and is exempt from review under E.O. 12866.

Authority: 16 U.S.C. 1801 *et seq.*

Dated: February 23, 1996.

Donald J. Leedy,

*Acting Director, Office of Fisheries Conservation and Management, National Marine Fisheries Service.*

[FR Doc. 96–4593 Filed 2–26–96; 11:25 am]

BILLING CODE 3510–22–F

## 50 CFR Part 675

**[Docket No. 960129019–6019–01; I.D. 022396D]**

## Groundfish of the Bering Sea and Aleutian Islands Area; Species in the Rock Sole/Flathead Sole/''Other Flatfish'' Fishery Category by Vessels Using Trawl Gear

**AGENCY:** National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

**ACTION:** Closure.

**SUMMARY:** NMFS is closing the directed fishery for species in the rock sole/flathead sole/''other flatfish'' fishery category by vessels using trawl gear in the Bering Sea and Aleutian Islands management area (BSAI). This action is necessary to prevent exceeding the first seasonal bycatch allowance of Pacific halibut apportioned to the trawl rock sole/flathead sole/''other flatfish'' fishery category in the BSAI.

**EFFECTIVE DATE:** 12 noon, Alaska local time (A.l.t.), February 26, 1996, until 12 noon, A.l.t., April 1, 1996.

**FOR FURTHER INFORMATION CONTACT:** Andrew N. Smoker, 907–586-7228.

**SUPPLEMENTARY INFORMATION:** The groundfish fishery in the BSAI exclusive economic zone is managed by NMFS according to the Fishery Management Plan for the Groundfish Fishery of the Bering Sea and Aleutian Islands Area (FMP) prepared by the North Pacific Fishery Management Council under authority of the Magnuson Fishery Conservation and Management Act. Fishing by U.S. vessels is governed by regulations implementing the FMP at 50 CFR parts 620 and 675.

The first seasonal bycatch allowance of Pacific halibut for the BSAI trawl rock sole/flathead sole/''other flatfish'' fishery category, which is defined at § 675.21(b)(1)(iii)(B)(2), was established by the Final 1996 Harvest Specifications of Groundfish (61 FR 4311, February 5, 1996) as 453 metric tons.

The Director, Alaska Region, NMFS, has determined, in accordance with § 675.21(c)(1)(iii), that the first seasonal bycatch allowance of Pacific halibut apportioned to the trawl rock sole/flathead sole/''other flatfish'' fishery in the BSAI has been caught. Therefore, NMFS is prohibiting directed fishing for species in the rock sole/flathead sole/''other flatfish'' fishery category by vessels using trawl gear in the BSAI.

Maximum retainable bycatch amounts for applicable gear types may be found in the regulations at § 675.20(h).

Classification

This action is taken under 50 CFR 675.21 and is exempt from review under E.O. 12866.

Authority: 16 U.S.C. 1801 *et seq.*

Dated: February 23, 1996.

Donald J. Leedy,

*Acting Director, Office of Fisheries Conservation and Management, National Marine Fisheries Service.*

[FR Doc. 96–4592 Filed 2–26–96; 11:25 am]

BILLING CODE 3510–22–F

# Proposed Rules

Federal Register
Vol. 61, No. 41
Thursday, February 29, 1996

This section of the FEDERAL REGISTER contains notices to the public of the proposed issuance of rules and regulations. The purpose of these notices is to give interested persons an opportunity to participate in the rule making prior to the adoption of the final rules.

## DEPARTMENT OF AGRICULTURE

### Agricultural Marketing Service

### 7 CFR Part 28

**[CN–96–001]**

### Revision of User Fees for 1996 Crop Cotton Classification Services to Growers

**AGENCY:** Agricultural Marketing Service, USDA.

**ACTION:** Proposed rule.

**SUMMARY:** The Agricultural Marketing Service (AMS) is proposing to reduce user fees for cotton producers for 1996 crop cotton classification services under the Cotton Statistics and Estimates Act in accordance with the formula provided in the Uniform Cotton Classing Fees Act of 1987 and remove obsolete regulations. The 1995 user fee for the classification service was $1.60 per bale. This proposal would reduce the fee for the 1996 crop to $1.50 per bale. The proposed reduction in fees is due to increased efficiency in classing operations and is sufficient to recover the costs of providing classification services, including costs for administration, supervision, and development and maintenance of standards.

**DATES:** Comments must be received by April 1, 1996.

**ADDRESSES:** Comments and inquiries should be addressed to Lee Cliburn, Cotton Division, AMS, USDA, room 2641–S, P.O. Box 96456, Washington, DC 20090–6456. Comments will be available for public inspection during regular business hours at the above office in Rm. 2641–South Building, 14th & Independence Avenue, SW., Washington, DC.

**FOR FURTHER INFORMATION CONTACT:** Lee Cliburn, 202–720–2145.

**SUPPLEMENTARY INFORMATION:** This rule has been determined to be not significant for purposes of Executive Order 12866, and has not been reviewed by the Office of Management and Budget (OMB).

This proposed rule has been reviewed under Executive Order 12778, Civil Justice Reform. It is not intended to have retroactive effect. This rule would not preempt any state or local laws, regulations, or policies unless they present an irreconcilable conflict with this rule. There are no administrative procedures which must be exhausted prior to any judicial challenge to the provisions of this rule.

The Administrator, Agricultural Marketing Service (AMS), has considered the economic impact of this proposal on small entities pursuant to the requirements set forth in the Regulatory Flexibility Act (RFA) (5 U.S.C. 601 *et seq.*).

The purpose of the RFA is to fit regulatory actions to the scale of businesses subject to such actions in order that small businesses will not be disproportionately burdened. There are about 40,000 cotton growers who voluntarily submit their cotton for the classification service. The majority of the growers are small businesses under the criteria established by the Small Business Administration. The Administrator of AMS has certified that this action will not have a significant economic impact on a substantial number of small entities as defined in the RFA because: (1) The fee reduction reflects a decrease in the cost-per-unit currently borne by those entities utilizing the services; (2) the cost reduction will not affect competition in the marketplace; and (3) the use of classification services is voluntary.

In compliance with OMB regulations (5 CFR part 1320) which implement the Paperwork Reduction Act (PRA) of 1980 (44 U.S.C. 3501 *et seq.*), the information collection requirements contained in the provisions to be amended by this proposed rule have been previously approved by OMB and were assigned OMB control number 0581–0009 under the Paperwork Reduction Act of 1980 (44 U.S.C. 3501 *et seq.*).

It is anticipated that the proposed changes, if adopted, would be made effective July 1, 1996, as provided by the Cotton Statistics and Estimates Act.

Fees for Classification Under the Cotton Statistics and Estimates Act of 1927

The user fee charged to cotton producers for High Volume Instrument (HVI) classification services under the Cotton Statistics and Estimates Act (7 U.S.C. 473a) was $1.60 per bale during the 1995 harvest season as determined by using the formula provided in the Uniform Cotton Classing Fees Act of 1987, as amended by Public Law 102–237. The fees cover salaries, cost of equipment and supplies, and other overhead costs, including costs for administration, supervision, development, and maintenance of cotton standards.

This proposed rule establishes the user fee charged to producers for HVI classification at $1.50 per bale during the 1996 harvest season.

Public Law 102–237 amended the formula in the Uniform Cotton Classing Fees Act of 1987 for establishing the producer's classification fee so that the producer's fee is based on the prevailing method of classification requested by producers during the previous year. HVI classing was the prevailing method of cotton classification requested by producers in 1995. Therefore, the 1996 producer's user fee for classification service is based on the 1995 base fee for HVI classification.

The fee was calculated by applying the formula specified in the Uniform Cotton Classing Fees Act of 1987, as amended by Public Law 102–237. The 1995 base fee for HVI classification exclusive of adjustments, as provided by the Act, was $2.01 per bale. A 1.4 percent, or three cents per bale increase due to the implicit price deflator of the gross domestic product added to the $2.01 would result in a 1996 base fee of $2.04 per bale. The formula in the Act provides for the use of the percentage change in the implicit price deflator of the gross national product (as indexed for the most recent 12-month period for which statistics are available). However, this has been replaced by the gross domestic product by the Department of Commerce as a more appropriate measure for the short-term monitoring and analysis of the U.S. economy.

The number of bales to be classed by the United States Department of Agriculture from the 1996 crop is estimated at 19,024,000. The 1996 base fee was decreased 15 percent based on the estimated number of bales to be classed (one percent for every 100,000 bales or portion thereof above the base of 12,500,000, limited to a maximum adjustment of 15 percent). This percentage factor amounts to a 31 cents

per bale reduction and was subtracted from the 1996 base fee of $2.04 per bale, resulting in a fee of $1.73 per bale.

Assuming a fee of $1.73 per bale, the projected operating reserve would be 36.9 percent. The Act specifies that the Secretary shall not establish a fee which, when combined with other sources of revenue, will result in a projected operating reserve of more than 25 percent. Accordingly, the fee of $1.73 must be reduced by 23 cents per bale, to $1.50 per bale, to provide an ending accumulated operating reserve for the fiscal year of 25 percent of the projected cost of operating the program. This would establish the 1996 season fee at $1.50 per bale.

Accordingly, § 28.909, paragraph (b) would be revised to reflect the reduction in the HVI classification fees.

As provided for in the Uniform Cotton Classing Fees Act of 1987, as amended, a five cent per bale discount would continue to be applied to voluntary centralized billing and collecting agents as specified in § 28.909 (c).

Growers or their designated agents would continue to incur no additional fees if only one method of receiving classification data was requested. The fee for each additional method of receiving classification data in § 28.910 (a) would remain at five cents per bale, and it would be applicable even if the same method was requested. Since the Cotton Division will no longer accept returned diskettes to eliminate the possibility of computer virus infection, the cost of computer tapes or diskettes not returned will no longer be billed separately to the requestor. The fee in § 28.910 (b) for an owner receiving classification data from the central database would remain at five cents per bale, but a minimum charge of $5.00 for services provided per monthly billing period would be assessed. The provisions of § 28.910 concerning the fee for new classification memoranda issued from the central database for the business convenience of an owner without reclassification of the cotton would remain the same.

The fee for review classification in § 28.911 would be reduced from $1.60 per bale to $1.50 per bale.

The fee for returning samples after classification in § 28.911 would remain at 40 cents per sample.

List of Subjects in 7 CFR Part 28

Administrative practice and procedures, Cotton, Cotton samples, Grades, Market news, Reporting and record keeping requirements, Standards, Staples, Testing, Warehouses.

For the reasons set forth in the preamble, 7 CFR Part 28 is proposed to be amended as follows:

## PART 28—[AMENDED]

1. The authority citation for Part 28 would be revised to read as follows:

Authority: 7 U.S.C. 471–476.

2. In section 28.909, paragraph (b) would be revised to read as follows:

**§ 28.909 Costs.**

* * * * *

(b) The cost of High Volume Instrument (HVI) cotton classification service to producers is $1.50 per bale.

* * * * *

3. Section 28.910 would be amended by revising the concluding text of paragraph (a) and adding a sentence at the end of paragraph (b) to read as follows:

**§ 28.910 Classification of samples and issuance of classification data.**

(a) * * *

If the issuance of data to growers or to their agents is made by more than one method, the fee for each bale issued by each additional method shall be five cents. If provided as additional method of data transfer, the minimum fee for each tape or diskette issued shall be $10.00.

(b) * * * The minimum charge assessed for services obtained from the central database shall be $5.00 per monthly billing period.

* * * * *

4. In Section 28.911, the last sentence of paragraph (a) would be revised to read as follows:

**§ 28.911 Review classification.**

(a) * * * The fee for review classification is $1.50 per bale.

* * * * *

Dated: February 23, 1996.

Lon Hatamiya,

*Administrator.*

[FR Doc. 96–4702 Filed 2–28–96; 8:45 am]

BILLING CODE 3410–02–P

## DEPARTMENT OF TRANSPORTATION

## Federal Aviation Administration

## 14 CFR Part 71

**[Airspace Docket No. 96–ANM–5]**

## Proposed Establishment of Class E Airspace; Camp Guernsey, Wyoming

**AGENCY:** Federal Aviation Administration (FAA), DOT.

**ACTION:** Notice of proposed rulemaking.

**SUMMARY:** This proposed rule would establish the Camp Guernsey, Wyoming, Class E airspace. If established, the airspace would accommodate a new instrument approach procedure at Camp Guernsey Airport, Camp Guernsey, Wyoming. The area would be depicted on aeronautical charts for pilot reference.

**DATES:** Comments must be received on or before April 10, 1996.

**ADDRESSES:** Send comments on the proposal in triplicate to: Manager, Operations Branch, ANM–530, Federal Aviation Administration, Docket No. 96–ANM–5, 1601 Lind Avenue SW., Renton, Washington 98055–4056.

The official docket may be examined at the same address.

An informal docket may also be examined during normal business hours at the address listed above.

**FOR FURTHER INFORMATION CONTACT:** James Riley, ANM–532.2, Federal Aviation Administration, Docket No. 96–ANM–5, 1601 Lind Avenue SW., Renton, Washington 98055–4056; telephone number: (206) 227–2537.

**SUPPLEMENTARY INFORMATION:**

Comments Invited

Interested parties are invited to participate in this proposed rulemaking by submitting such written data, views, or arguments as they may desire. Comments that provide the factual basis supporting the views and suggestions presented are particularly helpful in developing reasoned regulatory decisions on the proposal. Comments are specifically invited on the overall regulatory, aeronautical, economic, environmental, and energy-related aspects of the proposal. Communications should identify the airspace docket number and be submitted in triplicate to the address listed above. Commenters wishing the FAA to acknowledge receipt of their comments on this notice must submit with those comments a self-addressed, stamped postcard on which the following statement is made: ''Comments to Airspace Docket No. 96–ANM–5.'' The postcard will be date/time stamped and returned to the commenter. All communications received on or before the specified closing date for comments will be considered before taking action on the proposed rule. The proposal contained in this notice may be changed in the light of comments received. All comments submitted will be available for examination at the address listed above both before and after the closing date for comments. A report summarizing each substantive public

contact with FAA personnel concerned with this rulemaking will be filed in the docket.

Availability of NPRM's

Any person may obtain a copy of this Notice of Proposed Rulemaking (NPRM) by submitting a request to the Federal Aviation Administration, Operations Branch, ANM–530, 1601 Lind Avenue SW., Renton, Washington 98055–4056. Communications must identify the notice number of this NPRM. Persons interested in being placed on a mailing list for future NPRM's should also request a copy of Advisory Circular No. 11–2A, which describes the application procedure.

The Proposal

The FAA is considering an amendment to part 71 of the Federal Aviation Regulations (14 CFR part 71) to establish Class E airspace at Camp Guernsey, Wyoming, to accommodate a new instrument approach procedure at Camp Guernsey Airport. The area would be depicted on aeronautical charts for pilot reference. The coordinates for this airspace docket are based on North American Datum 83. Class E airspace areas extending upward from 700 feet or more above the surface of the earth are published in Paragraph 6005 of FAA Order 7400.9C dated August 17, 1995, and effective September 16, 1995, which is incorporated by reference in 14 CFR 71.1. The Class E airspace designation listed in this document would be published subsequently in the Order.

The FAA has determined that this proposed regulation only involves an established body of technical regulations for which frequent and routine amendments are necessary to keep them operationally current. It, therefore, (1) is not a ''significant regulatory action'' under Executive Order 12866; (2) is not a ''significant rule'' under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) does not warrant preparation of a regulatory evaluation as the anticipated impact is so minimal. Since this is a routine matter that will only affect air traffic procedures and air navigation, it is certified that this rule, when promulgated, will not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

List of Subjects in 14 CFR Part 71

Airspace, Incorporation by reference, Navigation (air).

The Proposed Amendment

In consideration of the foregoing, the Federal Aviation Administration proposes to amend 14 CFR part 71 as follows:

## PART 71—[AMENDED]

1. The authority citation for 14 CFR part 71 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40103, 40113, 40120; E.O. 10854, 24 FR 9565, 3 CFR, 1959–1963 Comp., p. 389; 14 CFR 11.69.

**§ 71.1 [Amended]**

2. The incorporation by reference in 14 CFR 71.1 of the Federal Aviation Administration Order 7400.9C, Airspace Designations and Reporting Points, dated August 17, 1995, and effective September 16, 1995, is amended as follows:

*Paragraph 6005 Class E airspace areas extending upward from 700 feet or more above the surface of the earth.*

* * * * *

ANM WY E5 Camp Guernsey, WY [New]

Camp Guernsey Airport, WY
(lat. 42°15′42″ N, long. 104°43′42″ W)

That airspace extending upward from 700 feet above the surface within a 6.7-mile radius of the Camp Guernsey Airport, and within 6.4 miles each side of the 141° bearing from the Camp Guernsey Airport, extending from the 6.7-mile radius to 17.8 miles southeast of the Camp Guernsey Airport.

* * * * *

Issued in Seattle, Washington, on February 14, 1996.

Richard E. Prang,

*Acting Assistant Manager, Air Traffic Division, Northwest Mountain Region.*

[FR Doc. 96–4690 Filed 2–28–96; 8:45 am]

BILLING CODE 4910–13–M

## DEPARTMENT OF LABOR

### Occupational Safety and Health Administration

### 29 CFR Parts 1904 and 1952

**[Docket No. R–02]**

### Occupational Injury and Illness Recording and Reporting Requirements

**AGENCY:** Occupational Safety and Health Administration (OSHA), Department of Labor.

**ACTION:** Proposed rule: addendum.

**SUMMARY:** OSHA is publishing the executive summary of the Preliminary Economic Analysis for its proposed rule covering the recording and reporting of workplace deaths, injuries and illnesses, which appeared in the Federal Register on February 2, 1996 (61 FR 4030).

**DATES:** OSHA invites the public to submit written comments on the results of the Preliminary Economic Analysis on or before May 2, 1996.

**ADDRESSES:** Written comments are to be submitted in writing in quadruplicate to: Docket Officer, Docket No. R–02, Occupational Safety and Health Administration, Room N–2625, U.S. Department of Labor, 200 Constitution Avenue NW., Washington, DC 20210, telephone (202) 219–7894. To obtain copies of the full Preliminary Economic Analysis, contact the OSHA Docket Office.

**FOR FURTHER INFORMATION CONTACT:** Ms. Anne Cyr at (202) 219–8148.

**SUPPLEMENTARY INFORMATION:** OSHA published a proposed rule covering the recording and reporting of workplace deaths, injuries and illnesses on February 2, 1996. This addendum is intended to provide the public with information from the Preliminary Economic Analysis associated with the proposed rulemaking by publishing the executive summary. The OSHA Office of Regulatory Analysis prepared the Preliminary Economic Analysis of the rule and the analysis has been entered into the OSHA Docket (Docket R–02, Exhibit 13).

Signed in Washington, D.C., this 22nd day of February, 1996.

Joseph A. Dear,

*Assistant Secretary of Labor.*

Preliminary Economic Analysis for the Proposed Regulation for Recording and Reporting of Occupational Injuries and Illnesses (29 CFR Part 1904) Executive Summary

The Occupational Safety and Health Administration (OSHA) is proposing to revise its regulation on Recording and Reporting Occupational Injuries and Illnesses, which is codified at 29 CFR 1904. The proposed regulation will make a number of changes to OSHA's existing recordkeeping rule that are designed both to simplify recordkeeping and increase the accuracy and usefulness of the data recorded.

The proposed changes include changes in: OSHA Form 200, the Log and Summary of Occupational Injuries and Illnesses (to be renumbered Form 300), which contains one-line descriptions of all recordable occupational injuries and illnesses occurring at the establishment; OSHA Form 101, the Supplementary Record (to be renumbered Form 301 and designated the Incident Record), which provides additional detail about each case recorded on the Log; and associated

supplemental instructions. The revisions are designed to yield better data on occupational injuries and illnesses, to simplify employers' recordkeeping systems, to increase the utility of injury and illness records at the establishment/site level, to take greater advantage of modern technology, and to increase employee involvement and awareness. In addition, these revisions would modify the scope of the recordkeeping regulation to exclude many smaller establishments and to extend the coverage of the regulation to establishments in several industries not previously covered. Several other industries would be newly exempted. The net effect of these changes in scope is to target the regulation more effectively so that more occupational injuries and illnesses will be recorded accurately but fewer establishments will be covered by the regulation overall.

*Industry Profile*

An estimated 756,238 establishments employing 11 or more workers in various Standard Industrial Classification (SIC) codes that have historically high rates of injuries and illnesses currently must maintain OSHA records at all times. These establishments have an estimated 47,541,258 employees and record an estimated 4,789,085 occupational cases per year. The proposed regulation would cover fewer establishments than the current regulation (620,879 vs. 756,238), but would capture a larger number of the occupational injuries and illnesses occurring every year (approximately 5.1 million vs. 4.8 million).

*Costs and Economic Impact*

When compared with the existing rule, the proposed rule will reduce the overall recordkeeping burden on the business community. The net cost savings associated with the proposed revisions to the existing recordkeeping regulation are estimated to be $4.7 million per year. Economic impacts will be minimal, even for the minority of firms that incur some cost increases.

The following table from Chapter III of the Preliminary Economic Analysis provides an overview of the costs associated with the current rule, the proposed rule, and the resulting cost savings.

TOTAL AND NET COSTS OF ALL REVISIONS TO THE RECORDKEEPING RULE

| Cost Element | Estimated Number of Establishments Affected | Estimated Number of Cases Affected | Time Required for Activity (Minutes) | Total Cost of Revised Regulation (Dollars) | Total Costs Associated with Existing Rule (Dollars) | Net Costs of Proposed Regulation (Dollars) |
|---|---|---|---|---|---|---|
| Learning Basics of Recordkeeping System—Establishments Not Formerly Covered* | 162,361 | ..... | 25 | 186,764 | 0 | 186,764 |
| Learning Basics of Record Keeping System—Turnover | 124,176 | ..... | 25 | 1,003,246 | 1,466,363 | (463,117) |
| Learning About Revised Recordkeeping System (Establishments That Will Continue to Be Covered)* | 458,518 | ..... | 15 | 316,461 | 0 | 316,461 |
| Set Up and Post Log | 620,879 | ..... | 8 | 1,605,194 | 1,955,146 | (349,951) |
| Certify Log (certification must be by plant manager rather than recordkeeper) | 620,879 | ..... | 5 | 2,264,816 | 488,786 | 1,776,030 |
| Provide Additional Information on Establishments | 620,879 | ..... | 5 | 1,003,246 | 0 | 1,003,246 |
| Maintain Log (time requirements reduced from 15 to 10 minutes per case to reflect simplified case entry)** | ..... | 5,088,947 | 10 | 16,445,935 | 23,215,308 | (6,769,373) |
| Maintain Individual Reports of Injury (Form 301 requires 3 minutes less than Form 101 which it replaces) | ..... | 508,895 | 17 | 2,795,809 | 3,095,374 | (299,565) |
| Option for Electronic Storage of Logs | ..... | 449,055 | −2 | (290,242) | 0 | (290,242) |
| Option to Keep Log Offsit | ..... | 101,779 | −5 | (164,459) | 0 | (164,459) |
| Provide Data to OSHA Inspectors | ..... | 40,000 | 2 | 27,854 | 25,854 | 2,000 |
| Allow Employee Access to Form 301 | ..... | 444,222 | 1 | 165,770 | 0 | 165,770 |
| Maintain Separate Records for "Other Workers" at Construction Sites | ..... | 52,074 | 10 | 168,287 | 0 | 168,287 |
| Total | ..... | ..... | ..... | 25,528,682 | 30,246,832 | (4,718,149) |

*This one time cost has been annualized over ten years at a discount rate of 7 percent.
**In addition, there would be non-quantifiable costs savings as a result of using a new column that would be provided on Form 300.
Sources: County Business Patterns (1992), BLS Annual Survey (1991), OSHA Office of Regulatory Analysis.

*Benefits*

The proposed changes to the recordkeeping requirements are associated with a number of potential benefits, including:

- More effective preventive efforts by employers, which could eliminate a minimum of 25,445 to 50,889 illnesses and injuries per year, based on current experience;
- Better identification by OSHA of types or patterns of injuries and illnesses and prevention efforts;
- Greater employer and employee awareness of the causes of occupational injuries, illnesses, and fatalities;
- Better data to assist in developing regulatory priorities;
- Better data for setting priorities among establishments for inspection purposes; and
- Increased ability of compliance officers to focus on significant hazards during inspections.

*Economic Impact, Regulatory Flexibility, Environmental Impact, and International Trade Analysis*

The average establishment affected by the proposed changes to the recordkeeping requirements is estimated to experience a net reduction in

recordkeeping costs annually. Thus, OSHA believes that the proposed regulation will not impose adverse economic impacts on firms in the regulated community. The proposed exemption from the regulation of all non-construction establishments with fewer than 20 employees will mean that most small entities will experience even larger cost savings. OSHA, therefore, does not expect the proposed regulation to have significant environmental or international effects. OSHA welcomes comments, and supporting data where available, on all aspects of the Preliminary Economic Analysis.

[FR Doc. 96–4431 Filed 2–28–96; 8:45 am]
BILLING CODE 4510–26–P

## ENVIRONMENTAL PROTECTION AGENCY

### 40 CFR Part 52

**[MO–29–1–7151b; FRL–5425–3]**

### Approval and Promulgation of Implementation Plans; State of Missouri

**AGENCY:** Environmental Protection Agency (EPA).

**ACTION:** Proposed rule.

**SUMMARY:** The EPA proposes to approve the State Implementation Plan (SIP) revision submitted by the state of Missouri for the purpose of fulfilling the Federal requirements of 40 CFR 51.396. In the final rules section of the Federal Register, the EPA is approving the state's SIP revision as a direct final rule without prior proposal because the Agency views this as a noncontroversial revision amendment and anticipates no adverse comments. A detailed rationale for the approval is set forth in the direct final rule. If no adverse comments are received in response to this proposed rule, no further activity is contemplated in relation to this rule. If the EPA receives adverse comments, the direct final rule will be withdrawn and all public comments received will be addressed in a subsequent final rule based on this proposed rule. The EPA will not institute a second comment period on this document. Any parties interested in commenting on this document should do so at this time.

**DATES:** Comments on this proposed rule must be received in writing by April 1, 1996.

**ADDRESSES:** Comments may be mailed to Lisa V. Haugen, Environmental Protection Agency, Air Planning and Development Branch, 726 Minnesota Avenue, Kansas City, Kansas 66101.

**FOR FURTHER INFORMATION CONTACT:** Lisa V. Haugen at (913) 551–7877.

**SUPPLEMENTARY INFORMATION:** See the information provided in the direct final rule which is located in the rules section of the Federal Register.

Dated: February 6, 1996.

Dennis Grams,

*Regional Administrator.*

[FR Doc. 96–4564 Filed 2–28–96; 8:45 am]
BILLING CODE 6560–50–P

### 40 CFR Part 52

**[CA 71–10–7281b; FRL–5423–1]**

### Approval and Promulgation of State Implementation Plans; California State Implementation Plan Revision, Mojave Desert Air Quality Management District and Ventura County Air Pollution Control District

**AGENCY:** Environmental Protection Agency (EPA).

**ACTION:** Proposed Rule.

**SUMMARY:** EPA is proposing to approve revisions to the California State Implementation Plan (SIP) which concern the control of volatile organic compound (VOC) emissions from asphalt roofing operations, semiconductor manufacturing operations, and glycol dehydrators.

The intended effect of proposing approval of these rules is to regulate emissions of VOCs in accordance with the requirements of the Clean Air Act, as amended in 1990 (CAA or the Act). In the Final Rules Section of this Federal Register, the EPA is approving the state's SIP revision as a direct final rule without prior proposal because the Agency views this as a noncontroversial revision amendment and anticipates no adverse comments. A detailed rationale for this approval is set forth in the direct final rule. If no adverse comments are received in response to this proposed rule, no further activity is contemplated in relation to this rule. If EPA receives adverse comments, the direct final rule will be withdrawn and all public comments received will be addressed in a subsequent final rule based on this proposed rule. The EPA will not institute a second comment period on this document. Any parties interested in commenting on this action should do so at this time.

**DATES:** Comments on this proposed rule must be received in writing by April 1, 1996.

**ADDRESSES:** Written comments on this action should be addressed to: Daniel A. Meer, Rulemaking Section (A–5–3), Air and Toxics Division, U.S. Environmental Protection Agency, Region 9, 75 Hawthorne Street, San Francisco, CA 94105–3901.

Copies of the rule revisions and EPA's evaluation report of each rule are available for public inspection at EPA's Region 9 office during normal business hours. Copies of the submitted rule revisions are also available for inspection at the following locations:

Mojave Desert Air Quality Management District, 15428 Civic Drive, Suite 200, Victorville, CA 92392

Ventura County Air Pollution Control District, 669 County Square Drive, Ventura, CA 93003

California Air Resources Board, Stationary Source Divison, Rule Evaluation Section, 2020 ''L'' Street, Sacramento, CA 95814

**FOR FURTHER INFORMATION CONTACT:** Patricia A. Bowlin, Rulemaking Section (A–5–3), Air and Toxics Division, U.S. Environmental Protection Agency, Region 9, 75 Hawthorne Street, San Francisco, CA 94105–3901, Telephone: (415) 744–1188.

**SUPPLEMENTARY INFORMATION:** This document concerns Mojave Desert Air Quality Management District Rule 471, Asphalt Roofing Operations; Ventura County Air Pollution Control District (VDAPCD) Rule 74.28, Asphalt Roofing Operations; VCAPCD Rule 74.21, Semiconductor Manufacturing; VCAPCD Rule 71.5, Glycol Dehydrators; and VCAPCD Rule 71, Crude Oil and Reactive Organic Compound Liquids. The California Air Resources Board submitted these rules to EPA on December 22, 1994; November 18, 1993; July 13, 1994; February 24, 1995; and February 24, 1995 respectively. For further information, please see the information provided in the Direct Final action which is located in the Rules Section of this Federal Register.

Authority: 42 U.S.C. 7401–7671q.

Dated: January 30, 1996.

Felicia Marcus,

*Regional Administrator.*

[FR Doc. 96–4569 Filed 2–28–96; 8:45 am]
BILLING CODE 6560–50–W

### 40 CFR Part 52

**[OK–11–1–6604b; FRL–5430–4]**

### Approval of Discontinuation of Tail Pipe Lead and Fuel Inlet Test for Vehicle Antitampering Program for Oklahoma

**AGENCY:** Environmental Protection Agency (EPA).

**ACTION:** Proposed rule.

**SUMMARY:** The EPA is approving the State Implementation Plan (SIP) revision submitted by the State of Oklahoma for the purpose of discontinuing the State's tail pipe lead and fuel inlet test in its vehicle antitampering program. The SIP revision also includes minor administrative changes related to Oklahoma antitampering program. In the final rules section of this Federal Register, the EPA is approving the State's SIP revision as a direct final rule without prior proposal because the Agency views this as a noncontroversial revision amendment and anticipates no adverse comments. A detailed rationale for the approval is set forth in the direct final rule. If no adverse comments are received in response to this proposed rule, no further activity is contemplated in relation to this rule. If the EPA receives adverse comments, the direct final rule will be withdrawn, and all public comments received will be addressed in a subsequent final rule based on this proposed rule. The EPA will not institute a second comment period on this action. Any parties interested in commenting on this action should do so at this time.

**DATES:** Comments on this proposed rule must be received in writing by April 1, 1996.

**ADDRESSES:** Written comments on this action should be addressed to Mr. Thomas H. Diggs, Chief, Air Planning Section, at the EPA Regional Office listed below. Copies of the documents relevant to this action are available for public inspection during normal business hours at the following locations. Interested persons wanting to examine these documents should make an appointment with the appropriate office at least twenty-four hours before the visiting day.

U.S. Environmental Protection Agency, Region 6, Multimedia Planning & Permitting Division (6PD–L), 1445 Ross Avenue, Suite 700, Dallas, Texas 75202–2733.

Oklahoma Department of Environmental Quality, Air Quality Program, 4545 North Lincoln Blvd., Suite 250, Oklahoma City, Oklahoma 73105–3483.

**FOR FURTHER INFORMATION CONTACT:** Mr. James F. Davis, Planning Section (6PD–L), Multimedia Planning & Permitting Division, USEPA Region 6, 1445 Ross Avenue, Dallas, Texas 75202–2733, telephone (214) 665–7584.

**SUPPLEMENTARY INFORMATION:** See the information provided in the direct final action of the same title which is located in the final rules section of this Federal Register.

Dated: January 12, 1996.

A. Stanley Meiburg,

*Acting Regional Administrator (6A).*

[FR Doc. 96–4568 Filed 2–28–96; 8:45 am]

**BILLING CODE 6560–50–P**

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## 40 CFR Part 63

**[AD-FRL–5431–1]**

**RIN 2060–AC19**

## National Emission Standards for Hazardous Air Pollutants for Source Categories: Organic Hazardous Air Pollutants From the Synthetic Organic Chemical Manufacturing Industry and Other Processes Subject to the Negotiated Regulation for Equipment Leaks

**AGENCY:** Environmental Protection Agency (EPA).

**ACTION:** Proposed rule.

**SUMMARY:** This action proposes to revise certain portions of the ''National Emission Standards for Hazardous Air Pollutants for Source Categories: Organic Hazardous Air Pollutants from the Synthetic Organic Chemical Manufacturing Industry and Other Processes Subject to the Negotiated Regulation for Equipment Leaks,'' which was issued as a final rule on April 22, 1994 and June 6, 1994. This rule is commonly known as the Hazardous Organic NESHAP or the HON. This action proposes to revise the date for submittal of those area source certifications and clarifies the wording of the documentation requirements. This action also proposes to extend the April 22, 1996 deadline for submittal of implementation plans for emission points not included in an emissions average to December 31, 1996. Because the revisions merely change the dates for submittal of the area source certifications and implementation plans, the EPA does not anticipate receiving adverse comments. Consequently the revisions are also being issued as a direct final rule in the final rules section of this Federal Register. If no significant adverse comments are timely received, no further action will be taken with respect to this proposal and the direct final rule will become final on the date provided in that action.

**DATES:** *Comments.* Comments must be received on or before April 1, 1996, unless a hearing is requested by March 11, 1996. If a hearing is requested, written comments must be received by April 15, 1996.

*Public hearing.* Anyone requesting a public hearing must contact the EPA no later than March 11, 1996. If a hearing is held, it will take place on March 15, 1996 beginning at 10:00 a.m.

**ADDRESSES:** *Comments.* Comments should be submitted (in duplicate, if possible) to: Air and Radiation Docket and Information Center (6102), Attention Docket Number A–90–20 (see docket section below), Room M–1500, U.S. Environmental Protection Agency, 401 M Street, SW, Washington, D.C. 20460. The EPA requests that a separate copy also be sent to the contact person listed below.

*Public hearing.* If a public hearing is held, it will be held at the EPA's Office of Administration Auditorium, Research Triangle Park, North Carolina. Persons interested in attending the hearing or wishing to present oral testimony should notify Mrs. Kim Teal, U.S. Environmental Protection Agency, Research Triangle Park, N.C. 27711, telephone (919) 541–5580.

*Docket.* Docket No. A–90–19, containing the supporting information for the original NESHAP and this action, are available for public inspection and copying between 8:00 a.m. and 5:30 p.m., Monday through Friday, at the EPA's Air and Radiation Docket and Information Center, Waterside Mall, Room M–1500, first floor, 401 M Street SW, Washington, DC 20460, or by calling (202) 260–7548 or 260–7549. A reasonable fee may be charged for copying.

**FOR FURTHER INFORMATION CONTACT:** Dr. Janet S. Meyer, Emission Standards Division (MD–13), U.S. Environmental Protection Agency, Office of Air Quality Planning and Standards, Research Triangle Park, North Carolina 27711, telephone number (919) 541–5254.

**SUPPLEMENTARY INFORMATION:** If no significant, adverse comments are timely received, no further activity is contemplated in relation to this proposed rule and the direct final rule in the final rules section of this Federal Register will automatically go into effect on the date specified in that rule. If significant adverse comments are timely received, the direct final rule will be withdrawn and all public comment received will be addressed in a subsequent final rule. Because the EPA will not institute a second comment period on this proposed rule, any parties interested in commenting should do so during this comment period.

For further supplemental information, the detailed rationale, and the rule provisions, see the information provided in the direct final rule in the final rules section of this Federal Register.

Administrative

*A. Paperwork Reduction Act*

The information collection requirements of the previously promulgated NESHAP were submitted to and approved by the Office of Management and Budget (OMB). A copy of this Information Collection Request (ICR) document (OMB control number 1414.02) may be obtained from Sandy Farmer, Information Policy Branch (PM–223Y); U.S. Environmental Protection Agency; 401 M Street, SW; Washington, DC 20460 or by calling (202) 260–2740.

Today's changes to the NESHAP should have no impact on the information collection burden estimates made previously. The change to the area source certification merely revises the date for submission of the certification and clarifies the documentation requirements. The change to the implementation plan requirements merely extends the date for submission of plans from existing sources. These changes do not impose new requirements. Consequently, the ICR has not been revised.

*B. Executive Order 12866 Review*

Under Executive Order (E.O.) 12866, the EPA must determine whether the proposed regulatory action is ''significant'' and therefore, subject to the Office of Management and Budget (OMB) review and the requirements of the Executive Order. The Order defines ''significant'' regulatory action as one that is likely to lead to a rule that may:

(1) Have an annual effect on the economy of $100 million or more or adversely affect in a material way the economy, a sector of the economy, productivity, competition, jobs, the environment, public health or safety in State, local, or tribal governments or communities;

(2) Create a serious inconsistency or otherwise interfere with an action taken or planned by another agency;

(3) Materially alter the budgetary impact of entitlements, grants, user fees or loan programs or the rights and obligations of recipients thereof; or

(4) Raise novel legal or policy issues arising out of legal mandates, the President's priorities, or the principles set forth in the Executive Order.

The HON rule promulgated on April 22, 1994 was considered ''significant'' under Executive Order 12866 and a regulatory impact analysis (RIA) was prepared. Today's proposed revisions provide more time to submit area source certifications and implementation plans. These proposed revisions do not add any additional control requirements. Therefore, this regulatory action is considered not significant.

*C. Regulatory Flexibility Act*

The Regulatory Flexibility Act of 1980 requires the identification of potentially adverse impacts of Federal regulations upon small business entities. The Act specifically requires the completion of a Regulatory Flexibility Analysis in those instances where small business impacts are possible. Pursuant to section 605(b) of the Regulatory Flexibility Act, 5 U.S.C. 605(b), the Administrator certifies that this rule will not have a significant economic impact on a substantial number of small entities. Because this rulemaking imposes no adverse economic impacts, a Regulatory Flexibility Analysis has not been prepared.

*D. Unfunded Mandates*

Under Section 202 of the Unfunded Mandates Reform Act of 1995 (''Unfunded Mandates Act''), the EPA must prepare a budgetary impact statement to accompany any proposed or final rule that includes a Federal mandate that may result in estimated costs to State, local, or tribal governments in the aggregate; or to the private sector, of $100 million or more. Under Section 205, the EPA must select the most cost effective and least burdensome alternative that achieves the objectives of the rule and is consistent with statutory requirements. Section 203 requires the EPA to establish a plan for informing and advising any small governments that may be significantly or uniquely impacted by the rule.

The EPA has determined that the action promulgated today does not include a Federal mandate that may result in estimated costs of $100 million or more to either State, local, or tribal governments in the aggregate, or to the private sector. Therefore, the requirements of the Unfunded Mandates Act do not apply to this action.

List of Subjects in 40 CFR Part 63

Environmental protection, Air pollution control, Hazardous substances, Reporting and recordkeeping requirements.

Dated: February 21, 1996.

Carol M. Browner,

*Administrator.*

[FR Doc. 96–4442 Filed 2–28–96; 8:45 am]

BILLING CODE 6560–50–P

**40 CFR Part 82**

**[FRL–5427–7]**

**[RIN 2060–AF36]**

## Protection of Stratospheric Ozone: Proposal to Temporarily Extend the Existing Requirements

**AGENCY:** Environmental Protection Agency (EPA).

**ACTION:** Proposed rule.

**SUMMARY:** Through this action EPA is proposing to amend the Clean Air Act section 608 refrigerant recycling regulations to extend the effectiveness of the refrigerant purity requirements of § 82.154(g) and (h), which are currently scheduled to expire on March 18, 1996, until December 31, 1996, or until EPA completes rulemaking to adopt revised refrigerant purity requirements based on industry guidelines, whichever comes first. EPA is proposing to extend the requirements in response to requests from the air-conditioning and refrigeration industry to avoid widespread contamination of the stock of chlorofluorocarbon (CFC) and hydrochlorofluorocarbon (HCFC) refrigerants that could result from the lapse of the purity standard. Such contamination would cause extensive damage to air-conditioning and refrigeration equipment, release of refrigerants, and refrigerant shortages with consequent price increases. Because the revisions merely extend the currently requirements for a limited time, EPA does not anticipate receiving adverse comments. Consequently revisions are also being issued as a direct final rule in the final rules section of today's Federal Register. The reader should review that document and the accompanying regulatory text. If no significant adverse comments are timely received, no further action will be taken with respect to this proposal and the direct final rule will become final on the date provided in that action.

**DATES:** Comments must be received by April 1, 1996. A public hearing, if requested, will be held in Washington, DC. If such a hearing is requested, it will be held on March 18, at 9:00 am, and the comment period would then be extended to April 17, 1996. Anyone who wishes to request a hearing should call Cindy Newberg at 202/233–9729 by March 7, 1996. Interested persons may contact the Stratospheric Protection Hotline at 1–800–296–1996 to learn if a hearing will be held and to obtain the date and location of any hearing. Any hearing will be strictly limited to the subject matter of this proposal.

**ADDRESSES:** Written comments on this proposed action should be addressed to

Public Docket No. A–92–01 VIII.G, Waterside Mall (Ground Floor) Environmental Protection Agency, 401 M Street, SW., Washington, DC 20460 in room M–1500.

The public hearing will be held at the EPA Auditorium, 401 M Street, SW., Washington, DC.

All supporting materials are contained in Docket A–92–01. Dockets may be inspected from 8 a.m. until 4 p.m., Monday through Friday. A reasonable fee may be charged for copying docket materials.

**FOR FURTHER INFORMATION CONTACT:** Cindy Newberg, Program Implementation Branch, Stratospheric Protection Division, Office of Atmospheric Programs, Office of Air and Radiation (6205–J), 401 M Street, SW., Washington, DC 20460, (202) 233–9729. The Stratospheric Ozone Information Hotline at 1–800–296–1996 can also be contacted for further information.

I. Supplementary Information

If no significant, adverse comments are timely received, no further activity is contemplated in relation to this proposed rule and the direct final rule in the final rules section of today's Federal Register will be final and become effective in accordance with the information discussed in that action. If significant adverse comments are timely received the direct final rule will be withdrawn and all public comments will be addressed in a subsequent final rule. The Agency will not institute a second comment period on this proposed rule; therefore, any parties interested in commenting should do so during this comment period.

For more detailed information and the rationale, the reader should review the information provided in the direct final rule in the final rules section of today's Federal Register.

II. Summary of Supporting Analysis

*A. Executive Order 12866*

Under Executive Order 12866 (58 FR 51735, October 4, 1993), the Agency must determine whether this regulatory action is ''significant'' and therefore subject to OMB review and the requirements of the Executive Order. The Order defines ''significant'' regulatory action as one that is likely to lead to a rule that may:

(1) Have an annual effect on the economy of $100 million or more, or adversely and materially affect a sector of the economy, productivity, competition, jobs, the environment, public health or safety, or State, local, or tribal governments or communities;

(2) Create a serious inconsistency or otherwise interfere with an action taken or planned by another agency;

(3) Materially alter the budgetary impact of entitlement, grants, user fees, or loan programs or the rights and obligations of recipients thereof; or

(4) Raise novel legal or policy issues arising out of legal mandates, the President's priorities, or the principles set forth in the Executive Order.

It has been determined by OMB and EPA that this action to propose amending the final rule is not a ''significant regulatory action'' under the terms of Executive Order 12866 and is therefore not subject to OMB review under the Executive Order.

*B. Unfunded Mandates Act*

Section 202 of the Unfunded Mandates Reform Act of 1995 (''Unfunded Mandates Act'') requires that the Agency prepare a budgetary impact statement before promulgating a rule that includes a Federal mandate that may result in expenditure by State, local, and tribal governments, in aggregate, or by the private sector, of $100 million or more in any one year. Section 203 requires the Agency to establish a plan for obtaining input from and informing, educating, and advising any small governments that may be significantly or uniquely affected by the rule.

Under section 205 of the Unfunded Mandates Act, the Agency must identify and consider a reasonable number of regulatory alternatives before promulgating a rule for which a budgetary impact statement must be prepared. The Agency must select from those alternatives the least costly, most cost-effective, or least burdensome alternative that achieves the objectives of the rule, unless the Agency explains why this alternative is not selected or the selection of this alternative is inconsistent with law.

Because this rulemaking is estimated to result in the expenditure by State, local, and tribal governments or private sector of less than $100 million in any one year, the Agency has not prepared a budgetary impact statement or specifically addressed the selection of the least costly, most cost-effective, or least burdensome alternative. Because small governments will not be significantly or uniquely affected by this rule, the Agency is not required to develop a plan with regard to small governments. As discussed in this preamble, this rule merely extends the current reclamation requirements during consideration of a more flexible approach that may result in reducing the burden of part 82 Subpart F of the Stratospheric Protection regulations on regulated entities, including State, local, and tribal governments or private sector entities.

*C. Paperwork Reduction Act*

There is no additional information collection requirements associated with this rulemaking EPA has determined that the Paperwork Reduction Act does not apply. The initial § 608 final rulemaking did address all recordkeeping associated with the refrigerant purity provisions. An Information Collection Request (ICR) document was prepared by EPA and approved by the Office of Management and Budget(OMB) under the Paperwork Reduction Act, 44 U.S.C. 3501 *et seq.* This ICR is contained in the public docket A–92–01.

*D. Regulatory Flexibility Act*

The Regulatory Flexibility Act, 5 U.S.C. 601–602, requires that Federal agencies examine the impacts of their regulations on small entities. Under 5 U.S.C. 604(a), whenever an agency is required to publish a general notice of proposed rulemaking, it must prepare and make available for public comment an initial regulatory flexibility analysis (RFA). Such an analysis is not required if the head of an agency certifies that a rule will not have an economic impact on a substantial number of small entities, pursuant to 5 U.S.C. 605(b).

EPA believes that since this amendment merely extends a current requirement designed to protect purity of refrigerants temporarily, there will be no adverse effects for the regulated community, including small entities. An examination of the impacts of these provisions was discussed in the initial final rule promulgated under § 608(58 FR 28660). That final rule assessed the impact the rule may have on small entities. A separate regulatory impact analysis was developed. That impact analysis accompanied the final rule and is contained in Docket A–92–01.

I certify that this proposed amendment to the refrigerant recycling rule will not have any additional negative economic impacts on any small entities.

Dated: February 14, 1996.

Carol M. Browner,

*Administrator.*

[FR Doc. 96–4037 Filed 2–28–96; 8:45 am]

**BILLING CODE 6560–50–P**

**40 CFR Part 180**

**[PP 9F3804/P646: FRL–5351–8]**

**RIN 2070–AB18**

## Sethoxydim; Pesticide Tolerance

**AGENCY:** Environmental Protection Agency (EPA).

**ACTION:** Proposed rule.

**SUMMARY:** This document proposes to increase the established pesticide tolerance for the combined residues of the herbicide sethoxydim; 2-[1-(ethoxyimino)butyl]-5-[2-(ethylthio)propyl]-3-hydroxy-2-cyclohexene-1-one) and its metabolite containing the 2-cyclohexene-1-one (calculated as the herbicide) in or on the raw agricultural commodities (RACs): apricots, cherries (sweet and sour), nectarines, and peaches at 0.2 part per million (ppm). These regulations to establish the maximum permissible levels for residues of the pesticide in or on the above commodities were requested in petitions submitted by BASF Corporation.

**DATES:** Comments, identified by the docket control number [PP 9F3804/P646], must appear on or before April 1, 1996.

**ADDRESSES:** By mail, submit written comments to: Public Response and Program Resources Branch, Field Operations Division (7506C), Office of Pesticide Programs, Environmental Protection Agency, 401 M St., SW., Washington, DC 20460. In person, bring comments to: Rm. 1132, CM #2, 1921 Jefferson Davis Hwy., Arlington, VA. Information submitted as a comment concerning this notice may be claimed confidential by marking any part or all of that information as ''Confidential Business Information'' (CBI). Information so marked will not be disclosed except in accordance with procedures set forth in 40 CFR part 2. A copy of the comment that does not contain CBI must be submitted for inclusion in the public record. Information not marked confidential may be disclosed publicly by EPA without prior notice. All written comments will be available for public inspection in Rm. 1132 at the address given above, from 8 a.m. to 4:30 p.m., Monday through Friday, excluding legal holidays.

Comments and data may also be submitted electronically by sending electronic mail (e-mail) to: opp-docket@epamail.epa.gov. Electronic comments must be submitted as an ASCII file avoiding the use of special characters and any form of encryption. Comments and data will also be accepted on disks in Word Perfect in 5.1 file format or ASCII file format. All comments and data in electronic form must be identified by the docket number [PP 9F3804/P646]. No Confidential Business Information (CBI) should be submitted through e-mail. Electronic comments on this proposed rule may be filed online at many Federal Depository Libraries. Additional information on electronic submissions can be found below in this document.

**FOR FURTHER INFORMATION CONTACT:** By mail, Robert J. Taylor, Product Manager (PM-25), Registration Division (7505C), Office of Pesticide Programs, Environmental Protection Agency, 401 M St., SW., Washington, DC 20460. Office location, telephone number, and e-mail address: Rm 241, CM #2, 1921 Jefferson-Davis Hwy., Arlington, VA, (703) 305-6027; e-mail: taylor.robert@epamail.epa.gov.

**SUPPLEMENTARY INFORMATION:** EPA issued notices, published in the Federal Register of January 9, 1990 (54 FR 779), which announced that BASF Corporation, P.O. Box 13528, Research Triangle Park, NC 27709–3528, had submitted pesticide petition (PP) 9F3804 and a food additive petition (FAP) 8H 5559 to EPA. Pesticide Petition 9F3804 requests that the Administrator, pursuant to section 408 (d) of the Federal Food, Drug, and Cosmetic Act (FFDCA), 21 U.S.C. 346 a(d), amend 40 CFR part 180 by establishing a tolerance for the combined residues of the herbicide sethoxydim; 2-[1-ethoxyimino)butyl]-5-[2-(ethylthio)propyl]-3-hydroxy-2-cyclohexene-1-one) and its metabolites containing the 2-cyclohexene-1-one moiety (calculated as the herbicide) in or on the crop grouping stone fruits at 0.2 part per million (ppm). Food additive petition 8H5559 requests that the Administrator, pursuant to section 408 of FFDCA (21 U.S.C. 348), amend 40 CFR part 186 by establishing a food additive regulation for the combined residues of the herbicide sethoxydim; 2-[1-(ethoxyimino)butyl]-5-[2-(ethylthio)propyl]-3-hydroxy-2-cyclohexene-1-one) and its metabolites containing the 2-cyclohexene-1-one moiety (calculated as the herbicide) in or on the processed food dried prunes at 0.4 ppm.

There were no comments or requests for referral to an advisory committee received in response to these notices.

The petitioner subsequently amended these notices by submitting a revised section F withdrawing the proposed food additive tolerance on dried prunes at 0.4 ppm (8H5559) and proposing that tolerances for residues of the herbicide be established for the raw agricultural commodities (RACs) apricots at 0.2 ppm, cherries (sweet and sour) at 0.2 ppm, nectarines at 0.2 ppm, and peaches at 0.2 ppm. Because the 0.2 ppm tolerances on apricots, cherries (sweet and sour), nectarines at 0.2 ppm and peaches have not been proposed previously and because it has been longer than five (5) years since the original proposal, the tolerances of 0.2 ppm on apricots, cherries (sweet and sour, nectarines, and peaches are being proposed for 30 days to allow for public comment.

The information submitted in the petitions and other relevant material have been evaluated. The pesticide is useful for the purpose for which the tolerances are sought. The toxicological data and other information considered in support of PP 9F3804 in the final rule referring to PP 4F4344, appear elsewhere in today's issue of the Federal Register.

The reference dose (RfD) based on a NOEL of 8.86 mg/kg/day in the 1-year feeding study in dogs and an uncertainty factor of 100 was calculated to be 0.09 mg/kg bwt/ day. The theoretical maximum residue contribution (TMRC) for existing tolerances for the overall U.S. population is 0.032904 mg/kg bwt/day or 37% of the RfD. The current action will increase the TMRC by 0.000061 mg/kg bwt/day. These tolerances and previously established tolerances utilize 37.67% of the RfD for the overall U.S. population. For U.S. subgroup populations, nonnursing infants and children aged 1 to 6, the current action and previously established tolerances utilize, respectively, a total of 64 and 74.319% of the RfD, assuming that residue levels are at the established tolerances and that 100% of the crop is treated.

Based on the information and the data considered, the Agency has determined that the tolerances established by amending 40 CFR part 180 would protect the public health. Therefore, it is proposed that these tolerances be established as set forth below.

Any person who has registered or submitted an application for registration of a pesticide under the Federal Insecticide, Fungicide, and Rodenticide Act, as amended, which contains any of the ingredients listed herein, may request within 30 days after publication of this document in the Federal Register that this rulemaking proposal as it relates to the section 408 tolerance be referred to an Advisory Committee in accordance with section 408 (e) of the FFDCA.

Interested persons are invited to submit written comments on the proposed regulation. Comments must bear a notation indicating the docket control number [PP 9F3804/P646]. All written comments filed in response to these petitions will be available in the Public Response and Program Resources Branch, at the address given above from 8 a.m. to 4:30 p.m., Monday through Friday, except legal holidays.

A record has been established for this rulemaking under docket number [PP 9F3804/P646] (including comments and data submitted electronically as described below). A public version of this record including printed, paper versions of electronic comments, which does not include any information claimed as CBI, is available for inspection from 8 a.m. to 4:30 p.m., Monday through Friday, excluding legal holidays. The public record is located in Room 1132 of the Public Response and Program Resources Branch, Field Operations Division (7506C), Office of Pesticide Programs, Environmental Protection Agency, Crystal Mall #2, 1921 Jefferson Davis Highway, Arlington, VA.

Electronic comments can be sent directly to EPA at:

opp-docket@epamail.epa.gov

Electronic comments must be submitted as an ASCII file avoiding the use of special characters and any form of encryption.

The official rulemaking, as well as the public version, as described above will be kept in paper form. Accordingly, EPA will transfer all comments received electronically into printed, paper form as they are received and will also include all comments submitted directly in writing. The official rulemaking record is the paper record maintained at the address in ''ADDRESSES'' at the beginning of this document.

Under Executive Order 12866 (58 FR 51735, October 4, 1993), the Agency must determine whether the regulatory action is ''significant'' and therefore subject to all the requirements of the Executive Order (i.e., Regulatory Impact Analysis, review by the Office of Management and Budget (OMB). Under section 3 (f), the order defines ''significant'' as those actions likely to lead to a rule: (1) Having an annual effect of the economy of $100 million or more, or adversely and materially affecting a sector of the economy, productivity, competition, jobs, the environment, public health or safety, or State, local or tribal governments or communities (also known as ''economically significant''); (2) creating serious inconsistency or otherwise interfering with an action taken or planned by another agency; (3) materially altering the budgetary impacts of entitlement, grants, user fees, or loan programs; or (4) raising novel legal or policy issues arising out of legal mandates, the President's priorities, or the principles set forth in this Executive Order.

Pursuant to the terms of this Executive Order, EPA has determined that this rule is not ''significant'' and is therefore not subject to OMB review.

Pursuant to the requirements of the Regulatory Flexibility Act (Pub. L. 96-354, 94 Stat. 1164, 5 U.S.C. 601-612), the Administrator has determined that regulations establishing new tolerances or raising tolerance levels or establishing exemptions from tolerance requirements, or establishing or raising food additive regulations do not have a significant economic impact on a substantial number of small entities. A certification statement to this effect was published in the Federal Register of May 4, 1981 (46 FR 24950).

List of Subjects in 40 CFR Part 180

Environmental protection, Administrative practice and procedure, Agricultural commodities, Pesticides and pests, Reporting and recordkeeping requirements.

Dated: February 20, 1996.

Stephen L. Johnson,

*Director, Registration Division, Office of Pesticide Programs.*

Therefore, 40 CFR part 180 is proposed to be amended as follows:

## PART 180—[AMENDED]

1. The authority citation for part 180 continues to read as follows:

Authority: 21 U.S.C. 346a and 371.

2. In § 180.412(a), by amending the table therein by adding and alphabetically inserting the new entries for apricots, cherries (sweet and sour), nectarines, and peaches to read as follows:

**§ 180.412 2-[1-(Ethoxyimino)butyl]-5-[2-(ethiothio)propyl]-3-hydroxy-2-cyclohexene-1-one; tolerances for residues.**

(a) * * *

| Commodity | Parts per million |
|---|---|
| * * * * * | |
| Apricots | 0.2 |
| * * * * * | |
| Cherries (sweet and sour) | 0.2 |
| * * * * * | |
| Nectarines | 0.2 |
| * * * * * | |
| Peaches | 0.2 |
| * * * * * | |

* * * * *

[FR Doc. 96–4400 Filed 2–28–96; 8:45 am]

BILLING CODE 6560–50–F

## 40 CFR Parts 220 and 227

**[FRL–5432–2]**

**RIN 2040–AC81**

## Testing Requirements for Ocean Dumping

**AGENCY:** Environmental Protection Agency (EPA).

**ACTION:** Proposed rule.

**SUMMARY:** EPA today is issuing a proposed rule that would clarify certain provisions of the Agency's ocean dumping regulations relating to requirements for bioassay testing. The purpose of today's proposal is to clarify regulatory language that was interpreted by the U.S. Court of Appeals for the Third Circuit in a different manner than EPA intended. Today's proposal would confirm the validity of existing testing practices, and would not change them.

**DATES:** Written comments on this proposed rule will be accepted until April 1, 1996. All comments must be postmarked or delivered by hand to the address below by this date.

**ADDRESSES:** Send written comments on this proposed rule to the Ocean Dumping Proposed Rule Comment Clerk, Water Docket, MC–4101, Environmental Protection Agency, 401 M Street, SW, Washington, DC 20460. Commenters should submit any references cited in their comments. Commenters are requested to submit an original and three copies of their written comments and any enclosures. Commenters who want receipt of their comments acknowledged should include a self-addressed, stamped envelope. No facsimile or electronic mail transmissions (faxes or e-mail) will be accepted.

A copy of the supporting documents for this proposed rule are available for review at EPA's Water Docket, Room L–102, 401 M Street, SW, Washington, DC 20460. For access to the docket materials, call 202/260–3027 between 9:00 a.m. and 3:30 p.m., for an appointment.

**FOR FURTHER INFORMATION, CONTACT:** John Lishman, Chief, Marine Pollution

Control Branch, Oceans and Coastal Protection Division (4504F), Environmental Protection Agency, 401 M Street, SW, Washington, DC 20460, telephone 202/260–8448.

**SUPPLEMENTARY INFORMATION:**

A. Statutory and Regulatory Background, and Summary of Previous Litigation

The Ocean Dumping Regulations, which govern the evaluation and permitting of material to be ocean dumped, were promulgated by EPA on January 11, 1977, under Title I of the Marine Protection, Research, and Sanctuaries Act of 1972, as amended, 33 U.S.C. 1401 et seq. (hereinafter ''the Act'' or ''the MPRSA''). These regulations are contained in 40 CFR Parts 220–229.

The MPRSA prohibits the transportation of material from the United States for the purpose of ocean dumping without a permit, and prohibits U.S. instrumentalities and U.S. registered or flagged vessels from transporting materials from any location for the purpose of ocean dumping without a permit. The Act also prohibits the unpermitted dumping of material transported from a location outside the United States into the Territorial Sea or the Contiguous Zone, if the dumping affects the Territorial Sea or U.S. territory.

Under Section 102(a) of the Act (33 U.S.C. 1412(a)), EPA has responsibility for issuing permits for the ocean dumping of all materials other than dredged material. Under Section 103(a) of the Act (33 U.S.C. 1413(a)), the Secretary of the Army has responsibility for issuing permits for the ocean dumping of dredged material. This permitting authority has been delegated to the Corps of Engineers (''the Corps''). The Corps applies EPA ocean dumping regulations in making its permit decisions. EPA's role pertaining to the Corps' issuance of dredged material disposal permits is one of review and concurrence. Although the Corps is the permitting authority for dredged material, Section 103 of the Act establishes a substantial role for EPA with regard to the evaluation of the impacts of the ocean disposal of dredged material.

On June 1, 1993, Clean Ocean Action, an organization concerned with issues affecting water quality, as well as other groups (''the plaintiffs''), filed a complaint and a request for injunctive relief in the United States District Court, District of New Jersey, against the Corps, EPA, and the Port Authority of New York and New Jersey (''the Port Authority''), challenging an ocean dumping permit issued to the Port Authority by the Corps. *Clean Ocean Action* v. *York,* Civil No. 93–2402 (DRD) (D.N.J.). The permit authorized the Port Authority to perform maintenance dredging from two Port Authority facilities in Newark Bay, and to dispose of the dredged material in the Atlantic Ocean at the New York Bight Dredged Material Disposal Site (also known as the Mud Dump Site).

In a decision dated June 7, 1993, the District Court denied the plaintiffs' request for a preliminary injunction to halt the disposal of the dredged material at the Mud Dump Site. After additional briefing and other proceedings, the District Court issued a formal opinion on June 28, 1994, again denying the requested injunctive relief. In its opinion, the District Court also concluded that the bioassay tests performed on the dredged material met the requirements of the ocean dumping regulations. 861 F. Supp. 1203 (D.N.J. 1994).

On June 12, 1995, the United States Court of Appeals for the Third Circuit affirmed the District Court's denial of a preliminary injunction. *Clean Ocean Action* v. *York,* 57 F.3d 328 (3d Cir. 1995). The Third Circuit also stated, however, that the District Court had erred in its conclusion that the bioassays performed on the dredged material in issue met the requirements of the ocean dumping regulations.

As a result of the opinion of the Third Circuit, a degree of uncertainty now exists regarding certain of the ocean dumping regulatory testing requirements. Today's proposed rulemaking would clarify those regulatory requirements in a manner that is consistent with existing testing practices.

In particular, the Third Circuit examined the language of 40 CFR 227.6(c). That section currently provides that the potential for significant undesirable effects due to the presence of constituents listed at 40 CFR 227.6(a) ''shall be determined by application of results of bioassays on liquid, suspended particulate, and solid phases of wastes according to procedures acceptable to EPA, and for dredged material, acceptable to EPA and the Corps of Engineers.'' EPA and the Corps had argued, and the District Court had found, that § 227.6(c) reserves discretion in the agencies not to require bioaccumulation bioassay tests in the suspended phase if acceptable procedures for such tests are not available and approved for use. The Third Circuit, however, concluded that § 227.6(c) requires suspended phase bioaccumulation bioassays even where neither EPA nor the Corps of Engineers has identified acceptable procedures. The Court read that section as reserving discretion in the agencies to determine *how,* but not *whether,* to conduct the tests. 57 F.3d at 332.

As described more fully in Part B of today's preamble, today's proposal would amend §§ 220.2, 227.6, and 227.27 to more clearly reserve discretion regarding when bioassays are to be conducted. This would be done by clarifying that bioassays are not required if there are no Agency-approved procedures, as will be explained in more detail below. (EPA has previously amended §§ 227.6(c)(2) and 227.27(b) of the ocean dumping regulations to clarify specifically that bioaccumulation tests are not required in the suspended phase. See 59 FR 26566 (May 20, 1994) (Interim Final Rule); 59 FR 52650 (October 18, 1994) (Final Rule)).

The Third Circuit opinion also addressed § 227.27(d). That section provides that ''appropriate sensitive benthic organisms,'' which are to be used in solid phase testing under § 227.6(c)(2), means ''at least one species each representing filter-feeding, deposit-feeding, and burrowing species chosen from among the most sensitive species accepted by EPA as being reliable test organisms to determine the anticipated impact on the site * * *'' There are some marine species that exhibit more than one of the filter-feeding, deposit-feeding, and burrowing characteristics. Current Agency guidance specifies that when bioaccumulation and toxicity testing is performed on the solid phase, two species may be used for each of these two sets of tests, so long as the two species together exhibit all of the three species characteristics. The Third Circuit opinion, however, could be construed to indicate that three different test species should be required for solid phase bioassay tests. See 57 F.3d at 332, 333 n.2. (In the case before the Third Circuit, only one benthic organism was tested for bioaccumulation of dioxin in the solid phase before the District Court required additional testing. 861 F. Supp. at 1210.)

EPA is proposing to amend the definition of the ''appropriate sensitive benthic organisms'' used in benthic bioassay tests to mean at least two species that together exhibit filter-feeding, deposit-feeding, and burrowing characteristics. Consistent with current Agency guidance, the proposed language would clarify that the use of two such species is sufficient. In addition, today's proposal would amend the definition of ''appropriate sensitive

marine organisms,'' which are to be used in suspended phase tests under § 227.6(c)(3), to mean at least two species that together are representative of the following types of organisms: phytoplankton or zooplankton, crustacean or mollusk, and fish. The proposed language would clarify, consistent with current agency guidance, that the use of two such species is sufficient.

The purpose of today's proposal is to clarify the regulatory language that was interpreted by the Third Circuit in a different manner than EPA intended. The Agency is *not* changing the evaluative procedures that are currently used and set out in program guidance and thus is not changing the level of environmental protection of the ocean dumping program. EPA is allowing for a thirty day period for comment on this proposal. The Agency believes a thirty day comment period is adequate because the proposal would clarify the regulations in a manner consistent with existing practices. The Agency also is working on more comprehensive amendments to the ocean dumping regulations in order to further update them and improve their clarity. The Agency anticipates issuance of a proposal later this year.

B. Discussion

*(1) Bioassay provisions*

The mere presence of contaminants or pollutants in material proposed for disposal does not in itself reveal the potential for adverse effects on marine life, or whether pollutants are even present in forms that are bioavailable (Reference 1 and 2). Because of this, exposure of organisms to material proposed for dumping in laboratory tests or other biological effects-based assessments are conducted to determine the potential for adverse biological effects resulting from contaminants that may be present in the material (Reference 3). The determination of both when and how to perform such evaluations often involves complicated scientific and technical judgment. The Agency, as described below, has provided technical guidance to identify acceptable procedures for evaluating the potential biological effects of material proposed for dumping.

In 1977, EPA and the Corps provided national technical guidance on procedures for performing biological evaluations of dredged material in the manual entitled ''Ecological Evaluation of Proposed Discharge of Dredged Material into Ocean Waters'' (''the Green Book'')(Reference 4). EPA provided national technical guidance for other material in the manual entitled ''Bioassay Procedures for the Ocean Disposal Permit Program(''the Blue Book'') in 1977 (Reference 5); the Green Book was revised in 1991 (Reference 6). The guidance describes scientifically and technically appropriate testing and evaluations to assess the potential biological effects of material proposed for ocean dumping. Because such guidance has been issued, today's proposal would update the regulations to delete provisions in § 227.6(e) referring to such guidance as being under development and providing interim criteria, as well as similar language from § 227.27(b) and (d).

As previously discussed, the existing regulations provide that bioassays shall be run ''in accordance with'' approved Agency procedures. This language was intended to reserve Agency technical discretion on when and how to perform such bioassays. However, the Third Circuit opinion has cast some doubt on this issue. To better clarify that the Agency has reserved its discretion in establishing procedures for when and how to perform bioassays, today's proposal would add a new definition of ''bioassay'' in proposed § 220.2(j) to make clear that references in the regulations to ''bioassays'' means only those that have been approved for use by EPA, or in the case of dredged material, approved by EPA and the Corps. The intent is to make clear that in the absence of approved procedures, bioassays are not required by the regulations. As a conforming matter, today's proposal would also delete language in existing §§ 227.6(c), (c)(2), c(3), and 227.27(a)(2) and (b) referring to bioassay procedures approved by the Agency. The language that is proposed to be deleted becomes redundant or unnecessary in light of the proposed definition of ''bioassay.''

The proposed definition of bioassay further makes clear that the Agency has reserved its discretion on the evaluative procedures to be used by employing the term ''effects-based evaluations.'' This would be done to avoid any implication that the regulations intend to mandate only the exposure of organisms to materials or contaminants in laboratory tests. While such tests provide one way to evaluate the toxicity and bioaccumulation potential of contaminants from a material proposed for ocean disposal, they are not the only way to make such assessments. Improvements in the sciences of toxicology and risk assessment allow conclusions to be made about the potential environmental impacts of ocean disposal of a material without actually running such laboratory tests in all cases. As a result, an adequate evaluation of material proposed for ocean dumping does not always require the performance of specific laboratory biological tests for each material or contaminant evaluated. In general, as will be explained below, the following biological effects-based approaches can be used or combined to evaluate material proposed for ocean disposal: (1) Laboratory tests of organisms exposed to the material or results of such tests run on similar material; (2) toxicological and/or risk assessment models; or (3) screening evaluations that use highly protective estimates of exposure and effects assumptions.

As stated above, exposure of organisms to materials or contaminants in laboratory experiments provide one way to measure the potential effects of dumping the material. Results of such tests on similar material may also be adequate for determining the potential effects depending on a number of factors, including, but not limited to, the following: (1) Whether the methods used are consistent with currently approved test procedures; (2) whether organisms tested include those identified in 40 CFR 227.27 (c) and (d), as appropriate; and (3) whether the characteristics of the material tested are sufficiently similar to the material to be dumped so that one can reasonably predict the potential for environmental effects from dumping of the latter material by extrapolating from the results of testing on the former material.

The bioavailability of many contaminants in the environment also can be predicted through the use of toxicological and/or risk assessment models. For example, the equilibrium partitioning model is one approach that can be used to predict the bioavailable fraction of a contaminant in an aquatic sediment (Reference 2). A variation of this model, called the Theoretical Bioaccumulation Potential (TBP) model, has been used to screen dredged material for further bioaccumulation testing (Reference 6). A review of the use of the TBP model in dredged material evaluations indicates that it is highly protective because of the use of conservative assumptions in the model (Reference 7). In the future, incorporation of additional laboratory bioassay and field-generated information into the TBP model will improve its accuracy and reliability. In the meantime, however, its conservatism ensures that using it is an environmentally protective approach (Reference 7).

Finally, conservative assumptions also can be used to predict the ''upper bound'' of potential environmental

impacts. For example, evaluations can be based on the assumption that 100 percent of a contaminant in a material proposed for ocean disposal will be bioavailable. This approach can be used for screening chemicals that might require further evaluation to determine compliance with water quality criteria by assuming all of the contaminants in the material are dissolved into the water column during dumping. (Reference 6.) The use of TBP, as discussed above, integrates the use of toxicological models with conservative assumptions in determining the bioavailability of contaminants in the material that settles to the bottom after dumping.

The reference to ''effects-based evaluations'' in proposed § 220.2(j) is intended to make clear that, as provided for in approved Agency procedures, the approaches described above can be used to evaluate the potential environmental effects of material proposed for ocean dumping, either as a screening device in lieu of actual laboratory testing, or in combination with the results of such tests. At the same time, the language is intended to provide flexibility for the future in order to assure that as science and technology improve and other effects-based evaluations are approved for use, they may be used as well.

In addition, the current ocean dumping regulations provide that bioassays are to be conducted ''in accordance with'' procedures approved by EPA and the Corps. In certain cases, there are no approved laboratory testing protocols available, or as described above, other evaluative tools provide effects-based information comparable to that which might be obtained from running a laboratory bioassay. The Third Circuit opinion, however, could be read as suggesting that even though Agency-approved bioassay test procedures are not specified, the regulation still requires laboratory bioassays to be run. Although the proposed definition of bioassay described above is intended to resolve this point, in order to further remove any possible ambiguity, today's proposal would make a change in regulatory language in § 227.6(c). The proposed change would replace a reference to performing bioassays ''in accordance with'' approved Agency procedures, to performing bioassays ''when bioassay procedures have been approved.''

Finally today's proposal would also amend §§ 227.6(c)(2) and (3), 227.27(b), and 227.27(c), which currently provide that bioassays ''shall be conducted'' using approved organisms and procedures. To avoid any possible ambiguity that this might mandate only the use of laboratory tests on organisms exposed to the material proposed for dumping, today's proposal would make changes in those sections to clarify that ''*if*'' such laboratory testing is conducted it shall use approved organisms and procedures.

In summary, today's proposal is intended to confirm that the Agency has reserved discretion on how to evaluate material proposed for dumping. This has been done, as described above, in three principal ways: (1) by adding a definition of ''bioassay'' that makes clear that this term means an effects-based evaluation which is to be conducted only if approved procedures exist for such evaluations; (2) by revising language to be clear that the Agency has reserved discretion to identify what, when, and how evaluation processes will be used; and (3) by clarifying that laboratory tests are not required in all cases. These changes make clear that the Agency has reserved its discretion in this complex technical area.

Approved Agency evaluation procedures can be found in the Blue Book, the Green Book, and Regional implementation manuals, or parties seeking to use other procedures may seek their approval from EPA, or in the case of dredged material, from EPA and the Corps. EPA does not intend to require evaluations that have not been approved, or that are not useful in a regulatory context. The determination as to the types of evaluations necessary to assess potential biological effects of material proposed for ocean dumping involves highly complex technical issues, and is impacted by evolving changes in the science and methods underlying such assessments. Today's action by the Agency is intended to preserve EPA's discretion in this complex technical area to ensure that the appropriate and up-to-date evaluations as approved by the Agency are conducted.

*(2) Number and types of organisms to be tested*

The current ocean dumping regulations define ''appropriate sensitive marine organisms'' and ''appropriate sensitive benthic marine organisms'' for use in laboratory tests. The type of organisms used can impact on the sensitivity of the tests in determining toxicity, and the existing regulations provide that the organisms to be used represent three categories of organisms. For the liquid and suspended phases the organisms to be used are defined in § 227.27(c) ''as at least one species each representative of phytoplankton or zooplankton, crustacean or mollusk, and fish species chosen from among the most sensitive species documented in the scientific literature or accepted by EPA as being reliable test organisms* * *'' For the solid phase, these are defined in § 227.27(d) as ''at least one species each representing filter-feeding, deposit-feeding, and burrowing species chosen from among the most sensitive species accepted by EPA as being reliable test organisms* * *''

As discussed above, EPA has described a range of characteristics that the test species need to represent. The Agency believes this approach is protective of the marine environment because different marine organisms are known to exhibit different sensitivities to environmental contaminants (Reference 8). The Agency's approved testing allows the use of two different species that together cover the three species characteristics in 40 CFR 227.27(c) and (d). For example, the marine worm, *Nephtys incisa*, is both a deposit-feeder and burrower (Reference 9), and the amphipod crustacean, *Ampelisca abdita*, is both a filter-feeder and deposit-feeder (Reference 10).

The Third Circuit opinion, however, could be construed to indicate that 40 CFR 227.27(d) requires the use of three different test species for the solid phase. See, 57 F. 3d 328, 333 n. 2. EPA is proposing today to remove any ambiguity about the number and type of organisms specified by §§ 227.27(c) and (d). This would be done by removing the words ''one species each,'' and clarifying that what is meant is at least two species that together are representative of the three categories of organisms. The change makes clear that the use of two species representing the three characteristics specified in the regulations, is acceptable.

C. References

1. ''Effects-based testing and sediment quality criteria for dredged material'', T.D. Wright, R.M. Engler, and J.A. Miller, in *Water Quality Standards for the Twenty-First Century*, EPA–823–R–92–009, December 1992, pp. 207–218.

2. ''Technical basis for deriving sediment quality criteria for nonionic organic contaminants for the protection of benthic organisms by using equilibrium partitioning,'' U.S. Environmental Protection Agency, EPA–822–R–93–011, Washington, DC, September 1993.

3. ''The use of bioassays as part of a comprehensive approach to marine pollution assessment,'' *Mar. Pollut. Bull.* 14:81–84. 1983.

4. ''Ecological evaluation of proposed discharge of dredged material into ocean

waters,'' U.S. Environmental Protection Agency and U.S. Army Corps of Engineers, Second Printing, April 1978.

5. ''Bioassay procedures for the ocean disposal permit program,'' U.S. Environmental Protection Agency, Office of Research and Development, March 1978.

6. ''Evaluation of dredged material proposed for ocean disposal—testing manual,'' U.S. Environmental Protection Agency and U.S. Army Corps of Engineers, April 1991.

7. ''TBP revisited: a ten year perspective on a screening test for dredged sediment bioaccumulation potential,'' V.A. McFarland and P.W. Ferguson, in *Dredging '94 Proceedings of the Second International Conference on Dredging and Dredged Material Placement*, E.C. McNair, Ed., American Society of Civil Engineers, 1994.

8. ''Problems associated with selecting the most sensitive species for toxicity testing,'' J. Cairns, Jr. and B.R. Niederlechner, '' *Hydrobiologia* 153: 87–94 (1987).

9. ''Guidance manual: bedded sediment bioaccumulation tests,'' U.S. Environmental Protection Agency, Office of Research and Development, ERL–N Contribution No. N111, September 1989.

10. ''Methods for assessing the toxicity of sediment-associated contaminants with estuarine and marine amphipods,'' U.S. Environmental Protection Agency, EPA/600/R–94/025, June 1994.

## Compliance With Other Laws and Executive Orders

### *A. Regulatory Flexibility Act*

Under the Regulatory Flexibility Act (RFA), 5 U.S.C. 601 et seq., EPA must prepare a Regulatory Flexibility Analysis for regulations having a significant impact on a substantial number of small entities. The RFA recognizes three kinds of small entities, and defines them as follows:

(1) Small governmental jurisdictions: any government of a district with a population of less than 50,000.

(2) Small business: any business which is independently owned and operated and not dominant in its field, as defined by the Small Business Administration regulations under the Small Business Act.

(3) Small organization: any not for profit enterprise that is independently owned and operated and not dominant in its field.

As discussed below in the discussion of Executive Order 12866, today's proposed rule does not impose economic burdens. Accordingly, EPA has determined that today's proposed rule would not have a significant impact on a substantial number of small entities, and that a Regulatory Flexibility Analysis therefore is unnecessary.

### *B. Paperwork Reduction Act*

The Paperwork Reduction Act, 44 U.S.C. 3501 et seq., is intended to minimize the reporting and record keeping burden on the regulated community, as well as to minimize the cost of Federal information collection and dissemination. In general, the Act requires that information requests and record keeping requirements affecting ten or more non-Federal respondents be approved by the Office of Management and Budget. Since today's proposed rule would not establish or modify any information or record keeping requirements, it is not subject to the requirements of the Paperwork Reduction Act.

### *C. Executive Order 12866*

Under Executive Order 12866 (58 FR 51735, October 4, 1993), the Agency must determine whether the regulatory action is ''significant,'' and therefore subject to OMB review and the requirements of the Executive Order. The Order defines ''significant regulatory action'' as one that is likely to lead to a rule that may:

(1) Have an annual effect on the economy of $100 million or more, or adversely and materially affecting a sector of the economy, productivity, competition, jobs, the environment, public health or safety, or State, local, or tribal governments or communities;

(2) Create a serious inconsistency or otherwise interfere with an action taken or planned by another agency;

(3) Materially alter the budgetary impact of entitlements, grants, user fees, or loan programs, or the rights and obligations, of recipients thereof; or

(4) Raise novel legal or policy issues arising out of legal mandates, the President's priorities, or the principles set forth in the Executive Order.

It has been determined that this proposed rule is not a ''significant regulatory action'' under the terms of Executive Order 12866, and is therefore not subject to OMB review.

### *D. The Unfunded Mandates Reform Act, and Executive Order 12875*

Under the Unfunded Mandates Reform Act (UMRA) of 1995, signed into law on March 22, 1995, EPA must prepare a written statement to accompany any rule where the estimated costs to State, local, or tribal governments in the aggregate, or to the private sector, will be $100 million or more in any year. The UMRA defines a ''private sector mandate'' for regulatory purposes as one that, among other things, ''would impose an enforceable duty upon the private sector.'' EPA has determined that today's proposed regulation does not impose any enforceable duties upon the private sector. Therefore, this proposed rulemaking is not a ''private sector mandate,'' and is not subject to the requirements of the UMRA.

Further, EPA has determined that today's action does not include a Federal mandate that may result in estimated costs of $100 million or more to either State, local, or tribal governments in the aggregate, or to the private sector. This proposed rulemaking should have minimal impact on the regulatory burden imposed on permittees, because the proposed rulemaking merely clarifies ocean dumping testing requirements. Thus, EPA has determined that an unfunded mandates statement is unnecessary.

Executive Order 12875 requires that, to the extent feasible and permitted by law, no Federal agency shall promulgate any regulation that is not required by statute and that creates a mandate upon a State, local, or tribal government, unless funds necessary to pay the direct costs incurred by the State, local, or tribal government in complying with the mandate are provided by the Federal government. EPA has determined that the requirements of Executive Order 12875 do not apply to today's proposed rulemaking, since no mandate is created by this action.

## List of Subjects

*40 CFR Part 220*

Environmental protection, Engineer Corps, Water pollution control.

*40 CFR Part 227*

Environmental impact statements, Water pollution control.

Date: February 23, 1996.

Carol M. Browner,

*Administrator.*

For the reasons set out in this preamble, Parts 220 and 227 of Title 40 of the Code of Federal Regulations are proposed to be amended as follows:

## PART 220—[AMENDED]

1. The authority citation for Part 220 continues to read as follows:

Authority: 33 U.S.C. 1412 and 1418.

2. Section 220.2 is amended by adding paragraph (j) to read as follows:

### § 220.2 Definitions.

* * * * *

(j) *Bioassay* means such effects-based evaluations as may be approved by EPA,

or in the case of dredged material, by EPA and the Corps of Engineers, for use in evaluating whether material has the potential to cause acute, chronic, or other sublethal effects following dumping.

## PART 227—[AMENDED]

3. The authority citation for 40 CFR Part 227 continues to read as follows:

Authority: 33 U.S.C. 1412 and 1418.

4. Section 227.6 is amended:

a. In paragraph (a) introductory text by removing the words ''(f), (g), and (h)'', and adding, in their place, the words ''(e), (f), and (g)''.

b. In paragraph (c) introductory text, by removing from the first sentence the words ''according to procedures acceptable to EPA, and for dredged material acceptable to'', and adding, in their place, the words ''when bioassay procedures have been approved by EPA, or for dredged material, approved by'';

c. By removing the second and third sentences of paragraph (c)(2) and of paragraph (c)(3) and by adding a new sentence in their place in each paragraph, to read as follows:

### § 227.6 Constituents prohibited as other than trace contaminants.

* * * * *

(c) * * *

(2) * * * If these bioassays involve laboratory testing of organisms, they shall be conducted with appropriate sensitive marine organisms as defined in § 227.27(c), and the procedures used will require exposure of organisms for a sufficient period of time and under appropriate conditions to provide reasonable assurance, based on consideration of the statistical significance of effects at the 95 percent confidence level, that, when the materials are dumped, no significant undesirable effects will occur due to chronic toxicity of the constituents listed in paragraph (a) of this section; and

(3) * * * If these bioassays involve laboratory testing of organisms, they shall be conducted with appropriate sensitive benthic marine organisms, and the procedures used will require exposure of organisms for a sufficient period of time to provide reasonable assurance, based on considerations of statistical significance of effects at the 95 percent confidence level, that, when the materials are dumped, no significant undesirable effects will occur due either to chronic toxicity or to bioaccumulation of the constituents listed in paragraph (a) of this section; and

* * * * *

e. By removing paragraph (e) and redesignating paragraphs (f) through (h) as paragraph (e) through (g).

5. Section 227.27 is amended:

a. In paragraph (a)(2), by removing the words ''in a bioassay carried out in accordance with approved EPA procedures'';

b. In the first sentence of paragraph (b), by removing the words ''using appropriate sensitive marine organisms in the case of the suspended particulate phase, or appropriate sensitive benthic marine organisms in the case of the solid phase;'';

c. In paragraph (b), by removing footnote 1 and by revising the last sentence to read as set forth below.

d. By revising paragraphs (c) and (d) to read as follows:

### § 227.27 Limiting Permissable Concentration (LPC).

* * * * *

(b) * * * If these bioassays involve laboratory testing of organisms, they shall be conducted with appropriate sensitive marine organisms in the case of the suspended particulate phase, or appropriate sensitive benthic marine organisms in the case of the solid phase.

(c) Appropriate sensitive marine organisms means at least two species that together are representative of the following types of organisms: phytoplankton or zooplankton, crustacean or mollusk, and fish. These organisms shall be chosen from among the most sensitive species documented in the scientific literature or accepted by EPA as being reliable test organisms to determine the anticipated impact of the wastes on the ecosystem at the disposal site. If the bioassays involve laboratory testing of these organisms, they shall be run for a minimum of 96 hours under temperature, salinity, and dissolved oxygen conditions representing the extremes of environmental stress at the disposal site, except that phytoplankton or zooplankton may be run for shorter periods of time as appropriate for the organisms tested at the discretion of EPA, or EPA and the Corps of Engineers, as the case may be.

(d) Appropriate sensitive benthic marine organisms means at least two species that together exhibit filter-feeding, deposit-feeding, and burrowing characteristics. These organisms shall be chosen from among the most sensitive species accepted by EPA as being reliable test organisms to determine the anticipated impact on the site.

[FR Doc. 96–4705 Filed 2–27–96; 11:06 am]

BILLING CODE 6560–50–P

## DEPARTMENT OF THE INTERIOR

## Fish and Wildlife Service

## 50 CFR Part 17

**RIN 1018–AD62**

## Endangered and Threatened Wildlife and Plants; Extension of Comment Period for Proposed Establishment of a Nonessential Experimental Population of California Condors in Northern Arizona

**AGENCY:** Fish and Wildlife Service, Interior.

**ACTION:** Proposed rule; extension of comment period.

**SUMMARY:** The U.S. Fish and Wildlife Service (Service) provides notice that the public comment period is extended for the proposal to designate a nonessential experimental population of California condors (*Gymnogyps californianus*) in northern Arizona and southern Utah. This population is proposed to be designated as a nonessential experimental population in accordance with section 10(j) of the Endangered Species Act (Act) of 1973, as amended. The extension of the comment period will allow all interested parties to submit written comments on the proposal.

**DATES:** The current comment period scheduled to close February 29, 1996 is now extended through April 1, 1996.

**ADDRESSES:** Written comments should be sent to the Field Supervisor, U.S. Fish and Wildlife Service, 2321 W. Royal Palm Road, Suite 103, Phoenix, Arizona 85021. Comments and materials received will be available for public inspection, by appointment, during normal business hours at the above Service address.

**FOR FURTHER INFORMATION CONTACT:** Jeffrey A. Humphrey, at the above address, 602/640–2720.

**SUPPLEMENTARY INFORMATION:**

Background

The Service, in cooperation with the Arizona Game and Fish Department, and the U.S. Bureau of Land Management, proposes to reintroduce California condors (*Gymnogyps californianus*) into northern Arizona. This reintroduction will achieve a primary recovery goal for this endangered species, establishment of a second non-captive population, spatially disjunct from the non-captive population in southern California. Section 10(j) of the Endangered Species Act of 1973 (Act) enables the Service to designate certain populations of

federally listed species that are released into the wild as ''experimental.'' This designation can increase the Service's flexibility to manage a reintroduced population. Section 10(j) allows an experimental population to be treated as a threatened species regardless of its designation elsewhere in its range and under section 4(d) of the Act. The Service has greater discretion in developing management programs for threatened species than it has for endangered species. Nonessential experimental populations located outside National Wildlife Refuges or National Park Service lands are treated, for the purpose of section 7 of the Act, as if they are proposed for listing. The area proposed for nonessential experimental designation occurs in northern Arizona, southern Utah and southeastern Nevada.

A proposed rule to designate a nonessential experimental population of California condors was published in the Federal Register (61 FR 35) on January 2, 1996.

Pursuant to 50 CFR 424.16(c)(2), the Service may extend or reopen a comment period upon finding that there is good cause to do so. Full participation of the affected public in the experimental population designation process, allowing the Service to consider the best scientific and commercial data available in making a final determination on the proposed action, is deemed as sufficient cause.

The current comment period on this proposal, which was extended by a document published on February 6, 1996 (61 FR 4394), closes on February 29, 1996. With the publication of this document, the Service further extends the public comment period. Written comments may now be submitted until April 1, 1996, to the Service office in the **ADDRESSES** section.

Author

The primary author of this notice is Jeffrey A. Humphrey (see **ADDRESSES**).

Authority

The authority for this action is the Endangered Species Act of 1973 (16 U.S.C. 1531–1544).

Nancy Kaufman,

*Regional Director, Region 2, Fish and Wildlife Service.*

[FR Doc. 96–4674 Filed 2–28–96; 8:45 am]

**BILLING CODE 4310–55–P**

## DEPARTMENT OF COMMERCE

## National Oceanic and Atmospheric Administration

## 50 CFR Part 681

**[I.D. 022296D]**

**RIN 0648–AI32**

## Western Pacific Crustacean Fisheries; Amendment 9

**AGENCY:** National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration, Commerce.

**ACTION:** Notice of availability of a fishery management plan amendment and request for comments.

**SUMMARY:** NMFS issues this notice that the Western Pacific Fishery Management Council (Council) has submitted Amendment 9 to the Fishery Management Plan for the Crustaceans Fisheries of the Western Pacific Region for review by the Secretary of Commerce (Secretary), and is requesting comments from the public. Amendment 9 would change the current harvest strategy to adapt to lower recruitment in the lobster fishery of the Northwestern Hawaiian Islands.

**DATES:** Written comments on the amendment must be received on or before April 26, 1996.

**ADDRESSES:** All comments should be sent to, Hilda Diaz-Soltero, Director, Southwest Region, NMFS, 501 West Ocean Boulevard, Suite 4200, Long Beach, CA 90802–4213. Copies of the amendment are available upon request from the Council, 1164 Bishop Street, Suite 1405, Honolulu, Hawaii 96813. Telephone 808–522–8220.

**FOR FURTHER INFORMATION CONTACT:** Svein Fougner, (310) 980–4034, Alvin Katekaru, (808) 973–2985, or Robert Harman, (808) 522–8220.

**SUPPLEMENTARY INFORMATION:** The Magnuson Fishery Conservation and Management Act (Magnuson Act) 16 U.S.C. 1801 *et seq.* requires that a Regional Fishery Management Council submit any amendment to a fishery management plan it has prepared to NMFS for review, disapproval, or partial disapproval. The Magnuson Act also requires that NMFS, upon receiving an amendment, immediately publish a notice that the amendment is available for public review and comment. The NMFS will consider all public comments received during the comment period in determining whether to approve the amendment for implementation.

Amendment 9 would:

(1) Establish an annual harvest guideline based on a constant harvest rate, which would replace the current system of harvesting all legal-sized lobsters above a certain population level;

(2) eliminate size limits and the prohibition on retaining egg-bearing lobsters because lobsters returned to the sea are believed to suffer a high mortality;

(3) implement framework procedures to modify management measures triggered by biological, social, or economic problems in the fishery; and

(4) authorize the Director, Southwest Region, to close the fishery by direct notice to fishermen.

An environmental assessment and regulatory impact review are incorporated in Amendment 9. These documents are available for review (see **ADDRESSES**).

The receipt date for Amendment 9 was February 21, 1996. Proposed regulations to implement Amendment 9 are scheduled to be published within 15 days of the receipt date.

Authority: 16 U.S.C. 1801 *et seq.*

Dated: February 23, 1996.

Richard W. Surdi,

*Acting Director, Office of Fisheries Conservation and Management, National Marine Fisheries Service.*

[FR Doc. 96–4608 Filed 2–26–96; 3:40 pm]

**BILLING CODE 3510–22–F**

# Notices

Federal Register
Vol. 61, No. 41
Thursday, February 29, 1996

This section of the FEDERAL REGISTER contains documents other than rules or proposed rules that are applicable to the public. Notices of hearings and investigations, committee meetings, agency decisions and rulings, delegations of authority, filing of petitions and applications and agency statements of organization and functions are examples of documents appearing in this section.

## DEPARTMENT OF AGRICULTURE

### Submission for OMB Review; Comment Request

February 23, 1996.

The Department of Agriculture has submitted the following information collection requirement(s) to OMB for review and clearance under the Paperwork Reduction Act of 1995, Public Law 104–13. Comments regarding these information collections are best assured of having their full effect if received within 30 days of this notification. Comments should be addressed to: Desk Officer for Agriculture, Office of Information and Regulatory Affairs, Office of Management and Budget (OMB), Washington, D.C. 20503 and to Department Clearance Officer, USDA, OIRM, Ag Box 7630, Washington, D.C. 20250–7630. Copies of the submission(s) may be obtained by calling (202) 720–6204 or (202) 720–6746.

Farm Service Agency

*Title*: Upland Cotton Domestic User/Exporter Agreement and Payment Program—Addendum.

*Summary*: This proposed rule amends the regulation to set the payment rate for exporters under the domestic user/exporter marketing certificate program on the date the Commodity Credit Corporation (CCC) determines is the date on which the cotton is shipped. To participate in the program, exporters are required to report to CCC on a weekly basis all export sales, and any cancellation or amendments to sales contracts.

*Need and Use of the Information*: The information collections are necessary to establish eligibility for payments of domestic users and exporters of U.S. upland cotton and to accurately determine the level of payments authorized under this program.

*Description of Respondents*: Business or other for-profit.

*Number of Respondents*: 300.

*Frequency of Responses*: Recordkeeping; Reporting: On occasion, Weekly.

*Total Burden Hours*: 4,675.

Donald E. Hulcher,

*Deputy Departmental Clearance Officer.*

[FR Doc. 96–4701 Filed 2–28–96; 8:45 am]

BILLING CODE 3410–01–M

### Office of the Secretary

### Advisory Committee on Agricultural Concentration

**AGENCY:** Office of the Secretary, USDA.

**ACTION:** Notice of intent to establish a Federal Advisory Committee; correction.

**SUMMARY:** In notice document 96–3589 beginning on page 6232 in the issue of Friday, February 16, 1996, make the following correction:

On page 6232, first line, third column, the words ''eight representatives'' should read ''nine representatives * * *'' and on the eleventh line the words ''two individuals with expertise in'' should read ''one individual with expertise in * * *''.

**EFFECTIVE DATE:** February 16, 1996.

**FOR FURTHER INFORMATION CONTACT:** Barbara Claffey, Assistant Deputy Administrator, Agricultural Marketing Service, Room 3064–S, 14th and Independence Avenue SW., Washington, D.C. 20250–1400, (202) 720–4276.

Dated: February 22, 1996.

Dan Glickman,

*Secretary.*

[FR Doc. 96–4586 Filed 2–28–96; 8:45 am]

BILLING CODE 3410–01–M

## ARCHITECTURAL AND TRANSPORTATION BARRIERS COMPLIANCE BOARD

### Meeting

**AGENCY:** Architectural and Transportation Barriers Compliance Board.

**ACTION:** Notice of meeting.

**SUMMARY:** The Architectural and Transportation Barriers Compliance Board (Access Board) has scheduled its regular business meetings to take place in Arlington, Virginia on Tuesday and Wednesday, March 12–13, 1996 at the times and location noted below.

**DATES:** The schedule of events is as follows:

Tuesday, March 12, 1996

9:00 am–Noon—Briefing on Rulemaking (Closed Session)
1:30 pm–3:00 pm—Planning and Budget Committee and Vision Statement Work Group
3:45 pm–5:00 pm—Technical Programs Committee

Wednesday, March 13, 1996

9:00 am–Noon—Ad Hoc Committee on Bylaws and Statutory Review
1:30 pm–3:30 pm—Board Meeting.

**ADDRESSES:** The meetings will be held at: Crystal Gateway Marriott, 1700 Jefferson Davis Highway, Arlington, Virginia.

**FOR FURTHER INFORMATION CONTACT:** For further information regarding the meetings, please contact Lawrence W. Roffee, Executive Director, (202) 272–5434 ext. 14 (voice) and (202) 272–5449 (TTY).

**SUPPLEMENTARY INFORMATION:** At the Board meeting, the Access Board will consider the following agenda items:

- Approval of the Minutes of the July 12 and September 13 Board Meetings.
- Executive Director's Report.
- Ad Hoc Committee on Bylaws and Statutory Review Report.
- Planning and Budget Committee and Vision Statement Work Group Reports.
- Fiscal Year 1996 Spending Plan.
- Fiscal Year 1997 Budget Request.
- Staff Feedback on Vision Statement.
- Report from Strategic Planning Group.
- Fiscal Years 1993–1995 Research Projects Status Reports.
- Fiscal Year 1996 Statements of Work.
- Research Being Conducted by Others.
- Election of Officers.

All meetings are accessible to persons with disabilities. Sign language interpreters and an assistive listening system are available at all meetings.

James J. Raggio,

*General Counsel.*

[FR Doc. 96–4581 Filed 2–28–96; 8:45 am]

BILLING CODE 8150–01–P

## COMMISSION ON CIVIL RIGHTS

### Agenda and Notice of Public Meeting of the New Jersey Advisory Committee

Notice is hereby given, pursuant to the provisions of the rules and regulations of the U.S. Commission on Civil Rights, that a meeting of the New Jersey Advisory Committee to the Commission will convene at 10:00 a.m. and adjourn at 4:00 p.m. on Monday, March 18, 1996, at the Human Resources Development Institute, 600 College Road, East, Princeton, New Jersey 08540. The purpose of the meeting is to consider and decide on project activity for the current program period.

Persons desiring additional information, or planning a presentation to the Committee, should contact Committee Chairperson Irene Hill-Smith, 609–468–5546, or Ki-Taek Chun, Director of the Eastern Regional Office, 202–376–7533 (TDD 202–376–8116). Hearing-impaired persons who will attend the meeting and require the services of a sign language interpreter should contact the Regional Office at least five (5) working days before the scheduled date of the meeting.

The meeting will be conducted pursuant to the provisions of the rules and regulations of the Commission.

Dated at Washington, DC, February 22, 1996.

Carol-Lee Hurley,

*Chief, Regional Programs Coordination Unit.*

[FR Doc. 96–4671 Filed 2–28–96; 8:45 am]

BILLING CODE 6335–01–P

### Agenda and Notice of Public Meeting of the Utah Advisory Committee

Notice is hereby given, pursuant to the provisions of the rules and regulations of the U.S. Commission on Civil Rights, that a meeting of the Utah Advisory Committee to the Commission will convene at 6:00 p.m. and adjourn at 8:30 p.m. on March 19, 1996, at the Shiloh Inn, 206 SW Temple, Salt Lake City, Utah 84101. The purpose of the meeting is to conduct orientation for new members, brief the Committee on Commission and regional activities, and update the Committee on the status of the current report.

Persons desiring additional information, or planning a presentation to the Committee, should contact Committee Chairperson Michael N. Martinez, 801–261–8169, or John F. Dulles, Director of the Rocky Mountain Regional Office, 303–866–1040 (TDD 303–866–1049). Hearing-impaired persons who will attend the meeting and require the services of a sign language interpreter should contact the Regional Office at least five (5) working days before the scheduled date of the meeting.

The meeting will be conducted pursuant to the provisions of the rules and regulations of the Commission.

Dated at Washington, DC, February 20, 1996.

Carol-Lee Hurley,

*Chief, Regional Programs Coordination Unit.*

[FR Doc. 96–4660 Filed 2–28–96; 8:45 am]

BILLING CODE 6335–01–P

## DEPARTMENT OF COMMERCE

### Bureau of the Census

### 1997 Economic Census Covering Professional, Management, and Support Services; Health and Social Assistance; Educational Services; Arts, Entertainment, and Recreation; and Other Services Sectors

**ACTION:** Proposed Agency Information Collection Activity; Comment Request.

**SUMMARY:** The Department of Commerce, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on proposed and/or continuing information collections, as required by the Paperwork Reduction Act of 1995, Public Law 104–13 (44 U.S.C. 3506(c)(2)(A)).

**DATES:** Written comments must be submitted on or before April 29, 1996.

**ADDRESSES:** Direct all written comments to Linda Engelmeier, Acting Departmental Forms Clearance Officer, Department of Commerce, Room 5327, 14th and Constitution Avenue, NW., Washington, DC 20230.

**FOR FURTHER INFORMATION CONTACT:** Requests for additional information or copies of the information collection instrument(s) and instructions should be directed to Jack Moody, Bureau of the Census, Room 2665, Building 3, Washington, DC 20233 on (301) 457–2689.

**SUPPLEMENTARY INFORMATION:**

I. Abstract

The Census Bureau is the preeminent collector and provider of timely, relevant, and quality data about the people and economy of the United States. Economic data are the Census Bureau's primary program commitment during nondecennial census years. The economic census, conducted under authority of Title 13 U.S.C., is the primary source of facts about the structure and functioning of the Nation's economy and features unique industry and geographic detail. Economic census statistics serve as part of the framework for the national accounts and provide essential information for government, business and the general public. The 1997 Economic Census will cover virtually every sector of the U.S. economy including approximately 594,000 professional, management, and support services establishments; 469,000 health and social assistance establishments; 22,000 educational services establishments; 79,000 arts, entertainment, and recreation establishments; and 373,000 other services establishments.

II. Method of Collection

Establishments in these sectors of the economic census will be selected for mailout from a frame given by the Census Bureau's Standard Statistical Establishment List. To be eligible for selection, an establishment will be required to satisfy the following conditions: (i) It must be classified in the professional, management, and support services; health and social assistance; educational services; arts, entertainment, and recreation; or other services sectors; (ii) it must be an active operating establishment of a multi-establishment firm, or it must be a single-establishment firm with payroll; and (iii) it must be located in one of the 50 states or the District of Columbia. Mail selection procedures will distinguish the following groups of establishments:

*A. Establishments of Multi-Establishment Firms*

Selection procedures will assign all active operating establishments of multi-establishment firms to the mail component of the potential respondent universe. We estimate that the census mail canvass for 1997 will include approximately 136,000 professional, management, and support services multi-establishment firms; 114,000 health and social assistance multi-establishment firms; 3,000 educational services multi-establishment firms, 9,000 arts, entertainment, and recreation multi-establishment firms; and 75,000 other services multi-establishment firms.

*B. Single-Establishment Firms With Payroll*

As an initial step in the selection process, we will conduct a study of the potential respondent universe for

professional, management, and support services; health and social assistance; educational services; arts, entertainment, and recreation; and other services sectors. The study of potential respondents will produce a set of industry-specific payroll cutoffs that we will use to distinguish large versus small single-establishment firms within each industry or kind of business. This payroll size distinction will affect selection as follows:

1. Large Single-Establishment Firms

Selection procedures will assign large single-establishment firms having annualized payroll (from Federal administrative records) that equals or exceeds the cutoff for their industry to the mail component of the potential respondent universe. We estimate that the census mail canvass for 1997 will include approximately 176,000 professional, management, and support services firms; 154,000 health and social assistance firms; 5,000 educational services firms; 41,000 arts, entertainment, and recreation firms; and 129,000 other services firms in this category.

2. Small Single-Establishment Firms

Selection procedures will assign a sample of small single-establishment firms having annualized payroll below the cutoff for their industry to the mail component of the potential respondent universe. Sampling strata and corresponding probabilities of selection will be determined by a study of the potential respondent universe conducted shortly before mail selection operations begin. We estimate that the census mail canvass for 1997 will include approximately 49,000 professional, management, and support services firms; 31,000 health and social assistance firms; 2,000 educational services firms; 4,000 arts, entertainment, and recreation firms; and 27,000 other services firms in this category.

All remaining single-establishment firms with payroll will be represented in the census by data from Federal administrative records. Generally, we will not include these small employers in the census mail canvass. However, administrative records sometimes have fundamental deficiencies that make them unsuitable for use in producing detailed industry statistics by geographic area. When we find such a deficiency, we will mail the firm a census short form to collect basic information needed to resolve the problem. We estimate that the census mail canvass for 1997 will include approximately 233,000 professional, management, and support services firms; 169,000 health and social assistance firms; 12,000 educational services firms; 25,000 arts, entertainment, and recreation firms; and 142,000 other services firms in this category.

III. Data

This information collected from businesses in these sectors of the economic census will produce basic statistics by kind of business for number of establishments, sales, payroll, and employment. It also will yield a variety of subject statistics, including sales by receipts or revenue line, sales by class of customer, and other industry-specific measures. Primary strategies for reducing burden in Census Bureau economic data collections are to increase electronic reporting through broader use of computerized self-administered census questionnaires, electronic data interchange, and other electronic data collection methods.

*OMB Number:* Not Available.

*Form Number:* The forms used to collect information from businesses in these sectors of the economic census are tailored to specific business practices and are too numerous to list separately in this notice. You can obtain information on the proposed content of the forms by calling Jack Moody on (301) 457–2689.

*Type of Review:* Regular review.

*Affected Public:* Businesses or other for profit institutions, non-profit institutions, small businesses or organizations, and state or local governments.

*Estimated Number of Respondents:*

Professional, Management, and Support Services (Standard Form)—361,000
Professional, Management, and Support Services (Short Form)—233,000
Health and Social Assistance (Standard Form)—299,000
Health and Social Assistance (Short Form)—169,000
Educational Services (Standard Form)—10,000
Educational Services (Short Form)—12,000
Arts, Entertainment, and Recreation (Standard Form)—54,000
Arts, Entertainment, and Recreation (Short Form)—25,000
Other Services (Standard Form)—231,000
Other Services (Short Form)—142,000
Estimated total number of respondents for these five sectors: 1,536,000

*Estimated Time Per Response:*

Professional, Management, and Support Services (Standard Form)—1.1 hours
Professional, Management, and Support Services (Short Form)—0.2 hours
Health and Social Assistance (Standard Form)—1.0 hours
Health and Social Assistance (Short Form)—0.2 hours
Educational Services (Standard Form)—0.8 hours
Educational Services (Short Form)—0.2 hours
Arts, Entertainment, and Recreation (Standard Form)—1.1 hours
Arts, Entertainment, and Recreation (Short Form)—0.2 hours
Other Services (Standard Form)—0.9 hours
Other Services (Short Form)—0.2 hours

*Estimated Total Annual Burden Hours:*

Professional, Management, and Support Services (Standard Form)—397,100
Professional, Management, and Support Services (Short Form)—46,600
Health and Social Assistance (Standard Form)—299,000
Health and Social Assistance (Short Form)—33,800
Educational Services (Standard Form)—8,000
Educational Services (Short Form)—2,400
Arts, Entertainment, and Recreation (Standard Form)—59,400
Arts, Entertainment, and Recreation (Short Form)—5,000
Other Services (Standard Form)—202,900
Other Services (Short Form)—28,400
Estimated total burden hours for these five sectors: 1,087,600

*Estimated Total Cost:* The cost to the government for this work is included in the total cost of the 1997 Economic Census, estimated to be $218 million.

IV. Request for Comments

Comments are invited on: (a) Whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden (including hours and cost) of the proposed collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology.

Comments submitted in response to this notice will be summarized and/or included in the request for OMB

approval of this information collection; they also will become a matter of public record.

Dated: February 26, 1996.

Linda Engelmeier,

*Acting Departmental Forms Clearance Officer, Office of Management and Organization.*

[FR Doc. 96–4700 Filed 2–28–96; 8:45 am]

**BILLING CODE 3510–07–P**

## National Oceanic and Atmospheric Administration

**[I.D. 022196A]**

## Caribbean Fishery Management Council; Public Meetings

**AGENCY:** National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

**ACTION:** Notice of public meetings.

**SUMMARY:** The Caribbean Fishery Management Council (Council), its Administrative Committee, the Scientific and Statistical Committee (SSC) and the Advisory Panel (AP) will hold meetings.

**DATES:** The meetings will be held on March 25–28, 1996.

**ADDRESSES:** All meetings will be held at the Marriott's Frenchman's Reef Beach Resort, St. Thomas, U.S. Virgin Islands.

*Council Address*: Caribbean Fishery Management Council, 268 Muñoz Rivera Avenue, Suite 1108, San Juan, PR 00918–2577.

**FOR FURTHER INFORMATION CONTACT:** Caribbean Fishery Management Council; telephone: (809) 766–5926.

**SUPPLEMENTARY INFORMATION:** The Council will hold its 88th regular public meeting to discuss the Third Amendment to the Reef Fish Fishery Management Plan (FMP) and the First Amendment to the Coral FMP, among other topics.

The Council will convene on March 27, 1996, from 9:00 a.m. until 5:00 p.m., and on March 28, from 9:00 a.m. until approximately 12:00 noon.

The Administrative Committee will meet on March 26, from 2:00 p.m. until 5:00 p.m., to discuss administrative matters regarding Council operations.

The SSC and AP will meet on March 25, 1996, from 10:00 a.m. until 5:00 p.m., to discuss the management alternatives for amendments to the Coral and Reef Fish FMPs.

The meetings are open to the public, and will be conducted in English. Fishers and other interested persons are invited to attend and participate with oral or written statements regarding agenda issues. There will be simultaneous translation (Spanish-English) at the AP meeting only.

Special Accommodations

These meetings are physically accessible to people with disabilities. For more information or requests for sign language interpretation and/or other auxiliary aids please contact Mr. Miguel A. Rolón, Executive Director, (see **ADDRESSES**) at least 5 days prior to the meeting date.

Dated: February 22, 1996.

Richard H. Schaefer,

*Director, Office of Fisheries Conservation and Management, National Marine Fisheries Service.*

[FR Doc. 96–4598 Filed 2–28–96; 8:45 am]

**BILLING CODE 3510–22–F**

**[I.D. 022196B]**

## Gulf of Mexico Fishery Management Council; Public Meeting

**AGENCY:** National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

**ACTION:** Notice of public meeting.

**SUMMARY:** The Gulf of Mexico Fishery Management Council (Council) will convene a public meeting.

**DATES:** The meeting will be held on March 20, 1996, from 1:00 p.m. to 5:00 p.m.

**ADDRESSES:** The meeting will be held at the Holiday Inn-Fort Brown, 1900 East Elizabeth Street, Brownsville, TX; telephone: 210–546–2201.

*Council address*: Gulf of Mexico Fishery Management Council, 5401 West Kennedy Boulevard, Suite 331, Tampa, FL 33609.

**FOR FURTHER INFORMATION CONTACT:** Steven Atran, Biologist; telephone: 813–228–2815.

**SUPPLEMENTARY INFORMATION:** The Law Enforcement Advisory Panel will review preliminary versions of two draft amendments to fishery management plans (FMP). Draft Amendment 9 to the Shrimp FMP addresses shrimp trawl bycatch and possible requirements for bycatch reduction devices. Draft Amendment 14 to the Reef Fish FMP addresses a possible permanent license limitation system for fish trap users and options for a ban on fish traps in Federal waters off of southwest Florida. This amendment also contains options to revise the reef fish framework procedure for setting total allowable catch, and to change the transferability provisions for reef fish vessel permits when transferring between vessel owners and operators who are the income qualifiers for the permit.

Special Accommodations

This meeting is physically accessible to people with disabilities. Requests for sign language interpretation or other auxiliary aids should be directed to Anne Alford at the Council (see **ADDRESSES**) by March 13, 1996.

Dated: February 22, 1996.

Richard H. Schaefer,

*Director, Office of Fisheries Conservation and Management, National Marine Fisheries Service.*

[FR Doc. 96–4599 Filed 2–28–96; 8:45 am]

**BILLING CODE 3510–22–F**

**[I.D. 022296C]**

## Pacific Fishery Management Council; Public Meetings and Hearings

**AGENCY:** National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

**ACTION:** Notice of availability of reports; notice of public meetings and hearings.

**SUMMARY:** The Pacific Fishery Management Council (Council) has begun its annual preseason management process for the 1996 ocean salmon fisheries. This notice announces the availability of Council documents and the dates and locations of Council meetings and public hearings. These actions comprise the complete schedule of events followed by the Council for determining the annual proposed and final modifications to ocean salmon management measures.

**DATES:** Written comments on the season options must be received by April 3, 1996. See **SUPPLEMENTARY INFORMATION** for dates, times, and locations of public meetings and hearings.

**ADDRESSES:** Written comments should be sent to Lawrence D. Six, Executive Director, Pacific Fishery Management Council, 2130 SW Fifth Avenue, Suite 224, Portland, OR 97201; telephone: (503) 326–6352.

**FOR FURTHER INFORMATION CONTACT:** John Coon, Salmon Management Coordinator; telephone: (503) 326–6352.

**SUPPLEMENTARY INFORMATION:**

March 1, 1996: Council reports that summarize the 1995 salmon season and project the expected salmon stock abundance for 1996 are available to the public from the Council office.

March 11–15, 1996: Council and advisory entities meet at the Red Lion Hotel Columbia River, 1401 North Hayden Island Drive, Portland, OR, to

adopt 1996 regulatory options for public review.

March 25, 1996: Report with proposed management options and public hearing schedule is mailed to the public. (The report includes options, rationale, and summary of biological and economic impacts.)

April 1–2, 1996: Public hearings are held to receive comments on the proposed ocean salmon fishery regulatory options adopted by the Council. All public hearings begin at 7 p.m. on the dates and at the locations specified below.

April 1, 1996: Westport High School Commons, 2850 S. Montesano Street, Westport, WA.

April 1, 1996: Pony Village Motor Inn, Ballroom, Virginia Avenue, North Bend, OR.

April 2, 1996: Red Lion Inn, Chinook Room, 400 Industry, Astoria, OR.

April 2, 1996: Red Lion Inn, Evergreen Room, 1929 Fourth Street, Eureka, CA.

April 8–12, 1996: Council and its advisory entities meet at the Holiday Inn San Francisco International Airport North, South San Francisco, CA, to adopt final 1996 regulatory measures.

April 18, 1996: Newsletter describing adopted ocean salmon fishing management measures is mailed to the public.

April 12–23, 1996: Salmon Technical Team completes ''Preseason Report III Analysis of Council Adopted Regulatory Measures for 1996 Ocean Salmon Fisheries.''

May 1, 1996: Federal regulations implemented and preseason report III available for distribution to the public.

Special Accommodations

The meeting is physically accessible to people with disabilities. Requests for sign language interpretation or other auxiliary aids should be directed to Eric Greene at (503) 326–6352 at least 5 days prior to the meeting date.

Dated: February 23, 1996.

Richard H. Schaefer,

*Director of Office of Fisheries Conservation and Management, National Marine Fisheries Service.*

[FR Doc. 96–4597 Filed 2–28–96; 8:45 am]

**BILLING CODE 3510–22–F**

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**[I.D. 022096A]**

## Endangered Species; Permits

**AGENCY:** National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

**ACTION:** Notice of receipt of a request to extend permit 962 (P509B), and issuance of modification 2 to permit 878.

**SUMMARY:** Notice is hereby given that Carlos Diez and Robert van Dam from the University of Central Florida (P509B) have applied in due form to extend Permit 962. Notice is also given that modification 2 has been issued to permit 878, held by Florida Department of Environmental Protection (P553). Both permits authorize the take of listed sea turtles for the purpose of scientific research, subject to certain conditions set forth therein.

**DATES:** Written comments or requests for a public hearing on the request to extend Permit 962 must be received on or before April 1, 1996.

**ADDRESSES:** The applications, permits, and related documents are available for review by appointment in the following offices:

Office of Protected Resources, F/PR8, NMFS, 1315 East-West Hwy., Room 13307, Silver Spring, MD 20910–3226 (301–713–1401);

or

Director, Southeast Region, NMFS, NOAA, 9721 Executive Center Drive, St. Petersburg, FL 33702–2432 (813–893–3141).

Written comments, or requests for a public hearing on the request to extend Permit 962 should be submitted to the Chief, Endangered Species Division, Office of Protected Resources.

**SUPPLEMENTARY INFORMATION:** The holders of Permit 962 request an extension from 1 year to 5 years, under the authority of the Endangered Species Act of 1973 (ESA) (16 U.S.C. 1531–1543) and NMFS regulations governing listed fish and wildlife permits (50 CFR parts 217–227). No other change to the current authorization is requested. The current permit authorizes the hand capture of 200 listed hawksbill sea turtles (*Eretmochelys imbricata*) and 20 listed green sea turtles (*Chelonia mydas*), to be examined, photographed, measured, and tagged. The research location is Mona and Monito Islands, PR (18°05′ N., 67°54′ W.). Some of the turtles may be lavaged, have blood or scute samples taken, or have time-depth recorders attached. A four-year extension would authorize this take annually until May 31, 2000. The goal of the research is to provide information on the ecology and population dynamics of the hawksbill that will make it possible to improve the effectiveness of management efforts, addressing the following recovery plan priorities: (1) The identification of important marine habitats, (2) the determination of adult and juvenile distribution and abundance, (3) the determination of sex ratios in the juvenile population, (4) the evaluation of the extent of ingestion of persistent marine debris, (5) the determination of growth rates and age at sexual maturity, and (6) the quantification of threats to adults and juveniles on foraging grounds. In justification for the extension of this permit, recovery plans and other publications indicate that studies such as abundance, distribution, growth rates, and sex ratios should be conducted for at least 10 years.

Permit 878 authorizes research on loggerhead, green, Kemp's ridley, hawksbill, and leatherback sea turtles in Florida waters. Some turtles are authorized for blood samples, laparoscopic examinations, lavage, and tumor collection. The purpose of the research is to investigate life histories, habitat requirements, migratory behaviors, and threats to the species. On February 20, 1996, Modification 2 was issued to Permit 878, increasing the number of listed sea turtles authorized to receive telemeters from 15 to 30. Issuance of this modification, as required by the ESA, was based on a finding that such modification: (1) Was applied for in good faith, (2) will not operate to the disadvantage of the listed species that are the subject of this modification, and (3) is consistent with the purposes and policies set forth in section 2 of the ESA.

Those individuals requesting a hearing on the request to extend Permit 962 should set out the specific reasons why a hearing on this particular request would be appropriate (see **ADDRESSES**). The holding of such hearing is at the discretion of the Assistant Administrator for Fisheries, NOAA. All statements and opinions contained in these permit summaries are those of the applicant and do not necessarily reflect the views of NMFS.

Dated: February 22, 1996

Russell J. Bellmer,

*Chief, Endangered Species Division, Office of Protected Resources, National Marine Fisheries Service.*

[FR Doc. 96–4600 Filed 2–28–96; 8:45 am]

**BILLING CODE 3510–22–F**

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**[I.D. 022296B]**

## Endangered Species; Permits

**AGENCY:** National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

**ACTION:** Receipt of applications for modifications to three scientific

research permits (P45K, P45L, and P45S).

**SUMMARY:** Notice is hereby given that the National Biological Service, U.S. Department of the Interior at Cook, WA (NBS) has applied in due form for modifications to permits to take endangered and threatened species for the purpose of scientific research.

**DATES:** Written comments or requests for a public hearing on any of these applications must be received on or before April 1, 1996.

**ADDRESSES:** The applications and related documents are available for review in the following offices, by appointment:

Office of Protected Resources, F/PR8, NMFS, 1315 East-West Highway, Silver Spring, MD 20910–3226 (301–713–1401); and

Environmental and Technical Services Division, 525 NE Oregon Street, Suite 500, Portland, OR 97232–4169 (503–230–5400).

Written comments or requests for a public hearing should be submitted to the Chief, Endangered Species Division, Office of Protected Resources.

**SUPPLEMENTARY INFORMATION:** NBS requests modifications to permits under the authority of section 10 of the Endangered Species Act of 1973 (ESA) (16 U.S.C. 1531-1543) and the NMFS regulations governing listed fish and wildlife permits (50 CFR parts 217-227).

NBS (P45K) requests modification 5 to permit 817 for an increase in their annual take of ESA-listed species in association with three additional scientific research activities under Study 1, originally entitled ''Identification of the spawning, rearing, and migratory requirements of fall chinook salmon in the Columbia River Basin.'' Permit 817 authorizes a direct take of juvenile, threatened, Snake River fall chinook salmon (*Oncorhynchus tshawytscha*) and an indirect take of juvenile, threatened, Snake River spring/summer chinook salmon (*Oncorhynchus tshawytscha*) for Study 1. NBS proposes to evaluate the extent, seasonality, and size selectivity of predation on subyearling fall chinook salmon; estimate food availability and growth of subyearling fall chinook salmon in nearshore rearing habitats for eventual use in a bioenergetics model; and relate juvenile fall chinook salmon survival to physiological development. A greater number of listed juvenile fish are proposed to be captured, handled, and released annually with a corresponding increase in indirect mortalities. Modification 5 would be valid for the duration of the permit. Permit 817 expires on December 31, 1996.

NBS (P45L) requests modification 1 to permit 905 for a change in the dates and locations of an ongoing scientific research activity and an increase in their annual take of ESA-listed species in association with two additional scientific research activities. Permit 905 authorizes a direct take of juvenile, threatened, Snake River fall chinook salmon and an indirect take of juvenile, threatened, Snake River spring/summer chinook salmon associated with a scientific study intended to assess the survival of wild and hatchery juvenile fall chinook salmon from rearing areas in the free-flowing Snake River through lower Snake River dams. NBS proposes to expand their annual collection season and extend their sampling locations to acquire the juvenile listed fish currently authorized to be taken for electrophoretic analysis. NBS also proposes to capture, handle, and release a greater number of listed juvenile fish annually to obtain non-lethal tissue samples from run-at-large juvenile spring chinook salmon and fall chinook salmon yearlings for genetic analysis and to relate juvenile fall chinook salmon survival to physiological development. Modification 1 would be valid for the duration of the permit. Permit 905 expires on December 31, 1996.

NBS (P45S) requests modification 1 to permit 956 for changes in scientific equipment application and sampling techniques and an increase in their annual take of ESA-listed species in association with two additional scientific research activities. Permit 956 authorizes a take of juvenile, threatened, artificially-propagated, Snake River spring/summer chinook salmon associated with a study designed to provide managers with data on the distribution, abundance, movement, and habitat preferences of the anadromous fish that migrate through Lower Granite Reservoir. NBS has been acquiring the data using radio transmitter tags applied by gastric insertion. NBS proposes to collect listed juvenile fish using a purse seine, apply the radio transmitter tags by surgical implantation, and transport the listed juvenile fish from the point of capture to an upstream release site. NBS also proposes to capture, handle, and release a greater number of listed juvenile fish annually to evaluate the operation of a surface collector prototype in the forebay of Lower Granite Dam and to use a mid-water trawl for species verification of hydroacoustic surveys. Modification 1 would be valid for the duration of the permit. Permit 956 expires on September 30, 1999.

Those individuals requesting a hearing (see **ADDRESSES**) should set out the specific reasons why a hearing on any of these applications would be appropriate. The holding of such hearing is at the discretion of the Assistant Administrator for Fisheries, NOAA. All statements and opinions contained in these application summaries are those of the applicants and do not necessarily reflect the views of NMFS.

Dated: February 23, 1996.

Ann D. Terbush,

*Chief, Permits and Documentation Division, Office of Protected Resources, National Marine Fisheries Service.*

[FR Doc. 96–4601 Filed 2–28–96; 8:45 am]

BILLING CODE 3510–22–F

## DEPARTMENT OF DEFENSE

### Department of the Air Force

### AFIT Subcommittee of the Air University Board of Visitors; Notice of Meeting

The Air Force Institute of Technology Subcommittee of the Air University Board of Visitors will hold an open meeting on 3–5 March 1996, with the first business session beginning at 0900 in the Commandant's Conference Room, Building 125, Wright-Patterson Air Force Base, Ohio (5 seats available).

The purpose of the meeting is to give the board an opportunity to review Air Force Institute of Technology's educational programs and to present to the Commandant a report of their findings and recommendations concerning these programs.

Less than 15 days public notice for this Subcommittee is due to scheduling conflicts of high level members and the difficulty to reschedule.

For further information on this meeting, contact Ms. Beverly Houtz in the Directorate of Plans and Operations, Air Force Institute of Technology, (513) 255–5760.

Patsy J. Conner,

*Air Force Federal Register Liaison Officer.*

[FR Doc. 96–4661 Filed 2–28–96; 8:45 am]

BILLING CODE 3910–01–M

### Air University Board of Visitors; Notice of Meeting

The Air University Board of Visitors will hold an opening meeting on 14–17 April 1996, with the first business session beginning at 0800 in the Air University Conference Room at

Headquarters Air University, Maxwell Air Force Base, Alabama (5 seats available).

The purpose of the meeting is to give the board an opportunity to review Air University educational programs and to present to the Commander, a report of their findings and recommendations concerning these programs.

For further information on this meeting, contact Dr. Dorothy Reed, BOV Coordinator, Air University, Maxwell Air Force Base, Alabama 36112–6335, telephone (334) 953–5159.

Patsy J. Conner,

*Air Force Federal Register Liaison Officer.*

[FR Doc. 96–4662 Filed 2–28–96; 8:45 am]

**BILLING CODE 3910–01–M**

## Department of the Army

### Availability of Non-Exclusive, Exclusive or Partially Exclusive Licenses (Recombinant DNA Molecules for Producing Terminal Transferase-like Polypeptides)

**AGENCY:** U.S. Army, Intellectual Property Law Division, Virginia.

**ACTION:** Notice.

**SUMMARY:** The Uniformed Services University of the Health Sciences Announces the general availability of exclusive, partially exclusive or non-exclusive licenses under the following patent application and any continuations, divisions or continuations in part of the same—

U.S. Patent No. 5,037,756

*Subject:* Recombinant DNA Molecules for Producing Terminal Transferase-like Polypeptides

*Inventors:* Frederick J. Bollum, et al.

*Issued:* 5 August 1991

Licenses shall comply with 35 U.S.C. 209 and 37 CFR 404.

**FOR FURTHER INFORMATION CONTACT:** Mr. Earl T. Reichert, Acting Chief, Intellectual Property Law Division, ATTN: JALS–IP, 901 North Stuart Street, Suite 700, Arlington, VA 22203–1837. Phone: (703) 696–8113.

**SUPPLEMENTARY INFORMATION:** Written objections must be filed within three (3) months from the date of this notice in the Federal Register.

Gregory B. Showalter,

*Army Federal Register Liaison Officer.*

[FR Doc. 96–4657 Filed 2–28–96; 8:45 am]

**BILLING CODE 3710–08–M**

## Department of Army, Corps of Engineers

### Intent to prepare a Draft Environmental Impact Statement (DEIS) for the proposed Ocean City, Maryland, and Vicinity Water Resources Feasibility Study at Ocean City, in Worcester County, Maryland

**AGENCY:** Army Corps of Engineers, DOD.

**ACTION:** Notice of intent.

**SUMMARY:** The Baltimore District, U.S. Army Corps of Engineers is initiating the Ocean City, Maryland, and Vicinity Water Resources Feasibility Study to investigate potential solutions to several water resources problems in Ocean City, Maryland. The study area includes Ocean City and Assateague Island, adjacent coastal bays and nearshore waters of the Atlantic, and Maryland mainland areas within the coastal watershed boundary. The Feasibility Study will address four different water-related problems in the Maryland coastal bay area as separate report components, including (1) the restoration of the northern end of Assateague Island; (2) long-term sand placement opportunities along Ocean City and Assateague Island shorelines; (3) restoration of terrestrial and aquatic habitat; and (4) navigation improvements to the harbor, inlet, and Thorofare channel. Cost-sharing partners in the study include the Maryland Department of Natural Resources, the Town of Ocean City, Worcester County, and the National Park Service (Assateague Island National Seashore). The scheduled completion date for the draft Ocean City, Maryland, and Vicinity Water Resources Feasibility Report and DEIS is June 1997.

**FOR FURTHER INFORMATION CONTACT:** Questions about the proposed action and DEIS can be addressed to Ms. Stacey Marek, Project Manager, Baltimore District, U.S. Army Corps of Engineers, ATTN: CENAB–PL–PC, P.O. 1715, Baltimore, Maryland 21203–1715, telephone (410) 962–4977. E-mail address:
ocwr@ccmail.nab.usace.army.mil

**SUPPLEMENTARY INFORMATION:**

1. The study was authorized by a resolution of the Committee of Environmental and Public Works of the U.S. Senate, adopted 15 May 1991.

2. The Ocean City inlet was formed in 1933 during a severe storm. In 1934 the Army Corps of Engineers constructed jetties to protect the newly formed waterway in an effort to provide for navigation between the coastal bays and the ocean. The inlet has functioned as a thoroughfare for boating traffic for the past 60 years; however, the jetties disrupt the normal movement of sediment along the coast from Ocean City to Assateague Island. Lacking this sediment supply, approximately 6 miles of the northern Assateague shoreline have been eroding at an accelerated rate and the island is vulnerable to breaching, or forming one of more new inlets. The first two of the four study components listed below address this problem.

3. Restoration of the North End of Assateague Island—This study component will address the short-term restoration of Assateague Island by investigating methods for a one-time placement of sediment on the north end of the island. The sediment placement will mitigate the historic impacts of the jetty-induced sediment deficit. Due to a potentially imminent breach of the island, this component of the study will be completed as a separate draft report prior to completion of the other three components.

4. Long-Term Sand Placement Opportunities—A second component of the study will address the long-term placement of sand to restore a normal sediment budget to the north end of Assateague Island. After analysis and evaluation, a method will be selected to provide a sand supply adequate to maintain the integrity of the northern portion of Assateague Island. This portion of the study will also review current Corps' shoreline protection activities at Ocean City to determine whether there is a more cost-effective method of re-nourishing the beach.

5. Restoration of Terrestrial and Aquatic Habitat in the Coastal Bays—This study component will identify the best methods for creating and restoring wetlands and islands throughout the coastal bay area for fish and wildlife habitat. It is expected that between 80 and 200 acres of habitat will be created or restored.

6. Navigation Improvements to the Harbor, Inlet, and Thorofare Channel—This study component will determine the best methods for improving navigation through the harbor, inlet, and Thorofare Channel. Existing shoals cause damage to both commercial and recreational vessels and extend travel time for vessels navigating the channels. It is expected that the study will investigate deepening and widening the Corps of Engineers' channel through the inlet and harbor, and creating and maintaining a Federal channel through the existing Thorofare Channel.

7. The Baltimore District is preparing a DEIS that will describe the overall public interest and the impacts of the

proposed project on environmental resources in the area. The DEIS will also apply guidelines issued by the Environmental Protection Agency, under authority of Section 404 of the Clean Water Act of 1977 (P.L. 95–217). Potential effects of the project on water quality and on recreational, aesthetic, cultural, economic, social, fish and wildlife, and other resources will also be investigated.

8. The public involvement program will include workshops, meetings, and other coordination with interested private individuals and organizations, as well as with concerned Federal, state, and local agencies. Coordination letters and a newsletter have been sent to appropriate agencies, organizations, and individuals on an extensive mailing list. Additional public information will be provided through print media, mailings, and radio and television announcements.

9. In addition to the Corps, the Maryland Department of Natural Resources, the National Park Service, the Town of Ocean City, and Worcester County, current participants in the DEIS process include the U.S. Environmental Protection Agency, U.S. Fish and Wildlife Service, National Marine Fisheries Service, Maryland Department of the Environment, Maryland Geological Survey, the Worcester Environmental Trust, and the Assateague Coastal Trust. The Baltimore District invites potentially affected Federal, state, and local agencies, and other organizations and entities to participate in this study.

10. The DEIS is tentatively scheduled to be available for public review in June of 1997.

James F. Johnson,

*Chief, Planning Division.*

[FR Doc. 96–4672 Filed 2–28–96; 8:45 am]

BILLING CODE 3710–41–M

## DEPARTMENT OF EDUCATION

### Proposed Information Collection Requests

**AGENCY:** Department of Education.

**ACTION:** Submission for OMB review; comment request.

**SUMMARY:** The Director, Information Resources Group, invites comments on the proposed information collection requests as required by the Paperwork Reduction Act of 1995.

**DATES:** Interested persons are invited to submit comments on or before April 1, 1996.

**ADDRESSES:** Written comments should be addressed to the Office of Information and Regulatory Affairs, Attention: Wendy Taylor, Desk Officer, Department of Education, Office of Management and Budget, 725 17th Street NW., Room 10235, New Executive Office Building, Washington, DC 20503. Requests for copies of the proposed information collection requests should be addressed to Patrick J. Sherrill, Department of Education, 600 Independence Avenue SW., Room 5624, Regional Office Building 3, Washington, DC 20202–4651.

**FOR FURTHER INFORMATION CONTACT:** Patrick J. Sherrill (202) 708–8196. Individuals who use a telecommunications device for the deaf (TDD) may call the Federal Information Relay Service (FIRS) at 1–800–877–8339 between 8 a.m. and 8 p.m., Eastern time, Monday through Friday.

**SUPPLEMENTARY INFORMATION:** Section 3506 of the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35) requires that the Office of Management and Budget (OMB) provide interested Federal agencies and the public an early opportunity to comment on information collection requests. OMB may amend or waive the requirement for public consultation to the extent that public participation in the approval process would defeat the purpose of the information collection, violate State or Federal law, or substantially interfere with any agency's ability to perform its statutory obligations. The Director of the Information Resources Group publishes this notice containing proposed information collection requests prior to submission of these requests to OMB. Each proposed information collection, grouped by office, contains the following: (1) Type of review requested, e.g., new, revision, extension, existing or reinstatement; (2) Title; (3) Summary of the collection; (4) Description of the need for, and proposed use of, the information; (5) Respondents and frequency of collection; and (6) Reporting and/or Recordkeeping burden. OMB invites public comment at the address specified above. Copies of the requests are available from Patrick J. Sherrill at the address specified above.

Dated: February 23, 1996.

Gloria Parker,

*Director, Information Resources Group.*

*Office of Postsecondary Education*

*Type of Review:* Revision.

*Title:* Confirmation Report for the Patricia Roberts Harris Fellowship Program Report.

*Frequency:* Annually.

*Affected Public:* Not-for-profit institutions.

*Annual Reporting and Recordkeeping Hour Burden:*

Responses: 100.

Burden Hours: 1,100.

*Abstract:* Institutions of higher education that have received Patricia Roberts Harris grants are required to demonstrate their compliance with statutory requirements for distribution of fellowships. Information collected will be used by institutions of higher education to document the eligibility characteristics of students who are scheduled to receive fellowships under the program and the amount of each student stipend.

*Office of Postsecondary Education*

*Type of Review:* Revision.

*Title:* Application for Ability-to-Benefit Testing Approval.

*Frequency:* Annually.

*Affected Public:* Individuals or households; Business or other for-profit; Not-for-profit institutions.

*Annual Reporting and Recordkeeping Hour Burden:*

Responses: 150,180.

Burden Hours: 75,090.

*Abstract:* The Secretary of Education will publish a list of approved tests which can be used by postsecondary educational institutions to establish the ability-to-benefit for a student who does not have a high school diploma or its equivalent.

[FR Doc. 96–4611 Filed 2–28–96; 8:45 am]

BILLING CODE 4000–01–M

### Submission of Data by State Educational Agencies

**AGENCY:** Department of Education.

**ACTION:** Notice of dates for submission of State revenue and expenditure reports for fiscal year 1995 and of revisions to those reports.

**SUMMARY:** The Secretary of Education announces a date for the submission by State educational agencies (SEAs) of preliminary expenditure and revenue data and average daily attendance statistics for fiscal year (FY) 1995 and establishes a deadline for any revisions to that information. The Secretary sets these dates to ensure that data are available to serve as the basis for timely distribution of Federal funds. The U.S. Bureau of the Census is the data collection agent for the Department's National Center for Education Statistics (NCES). The data will be published by NCES and will be used by the Secretary in the calculation of allocations for FY 1997 appropriated funds.

**DATE:** The suggested date for submission of preliminary data is March 15, 1996.

The mandatory deadline for submission of final data, including revisions to preliminary data, is September 3, 1996.

**ADDRESSES:** SEAs are urged to mail or hand deliver ED Form 2447 (The National Public Education Financial Survey—Fiscal Year 1995) by the first date specified in this notice. SEAs must mail or hand deliver final data and any revisions to preliminary data on or before the mandatory deadline date to—Bureau of the Census, Attn: Governments Division, Washington, DC 20233–0001.

An SEA may hand deliver any revisions to—Bureau of the Census, Governments Division, Room 508, 8905 Presidential Parkway, Washington Plaza II, Upper Marlboro, Maryland, 20772, by 4 p.m. (Washington, DC time) on or before the mandatory deadline date.

If an SEA's submission is received by the Bureau of the Census after the mandatory deadline date, in order for the submission to be accepted, the SEA must show one of the following as proof that the submission was mailed on or before the mandatory deadline date:

(1) A legibly dated U.S. Postal Service postmark.

(2) A legible mail receipt with the date of mailing stamped by the U.S. Postal Service.

(3) A dated shipping label, invoice, or receipt from a commercial carrier.

(4) Any other proof of mailing acceptable to the Secretary.

If the SEA mails ED Form 2447 through the U.S. Postal Service, the Secretary does not accept either of the following as proof of mailing:

(1) A private metered postmark.

(2) A mail receipt that is not dated by the U.S. Postal Service.

Note: The U.S. Postal Service does not uniformly provide a dated postmark. Before relying on this method, an SEA should check with its local post office.

**FOR FURTHER INFORMATION CONTACT:** Mr. Lawrence R. MacDonald, Chief, Governments Division, at the Maryland address specified above or by telephone: (301) 457–1563. Individuals who use a telecommunications device for the deaf (TDD) may call the Federal Information Relay Service (FIRS) at 1–800–877–8339 between 8 a.m. and 8 p.m., Eastern time, Monday through Friday.

**SUPPLEMENTARY INFORMATION:** Under the authority of section 404(a) of the National Education Statistics Act of 1994 (20 U.S.C. 9003(a)), which authorizes NCES to gather data on the financing of education, NCES collects data annually from SEAs through ED Form 2447. The report from SEAs includes attendance, revenue, and expenditure data from which NCES determines the average State per pupil expenditure (SPPE) for elementary and secondary education.

In addition to using SPPE data as useful information on the financing of elementary and secondary education, the Secretary uses these data directly in calculating allocations for certain formula grant programs, including Title I of the Elementary and Secondary Education Act of 1965, as amended by the Improving America's Schools Act of 1994 (Title I), Impact Aid, and Indian Education. Other programs such as The Education for Homeless Children and Youth Program under Title VII of the Stewart B. McKinney Homeless Assistance Act, the Dwight D. Eisenhower Professional Development Program, and the Safe and Drug-Free Schools and Communities Program make use of SPPE data indirectly because their formulas are based, in whole or in part, on State Title I allocations.

In February 1996, the Bureau of the Census, acting as the data collection agent for NCES, will mail to SEAs ED Form 2447 with instructions and will request that SEAs submit initial data to the Bureau of the Census by March 15, 1996. If an SEA does not submit initial FY 1995 data on ED Form 2447 on or about March 15, 1996, it should inform Census, in writing, of the delay and the date by which it will submit FY 1995 data. Submissions by SEAs to the Bureau of the Census are checked for accuracy and returned to each SEA for verification. NCES recognizes that data submitted prior to September 3, 1996, may be preliminary. In any case, all data, including any revisions to preliminary submissions, must be submitted to the Bureau of the Census by an SEA not later than September 3, 1996.

To ensure timely distribution of Federal education funds based on the best, most accurate data available, NCES establishes, for allocation purposes, September 3, 1996 as the final date by which ED Form 2447 must be submitted. However, if an SEA submits revised data after the final deadline that results in a lower SPPE figure, its allocations may be adjusted downward or the Department may request the SEA to return funds. SEAs should be aware that all of these data are subject to audit and that, if any inaccuracies are discovered in the audit process, the Department may seek recovery of overpayments for the applicable programs.

Authority: 20 U.S.C. 9003(a).

Dated: February 23, 1996.

Sharon P. Robinson,

*Assistant Secretary for Educational Research and Improvement.*

[FR Doc. 96–4609 Filed 2–28–96; 8:45 am]

**BILLING CODE 4000–01–P**

## DEPARTMENT OF ENERGY

### Environmental Management Site-Specific Advisory Board, Oak Ridge Reservation

**AGENCY:** Department of Energy.

**ACTION:** Notice of open meeting.

**SUMMARY:** Pursuant to the provisions of the Federal Advisory Committee Act (Public Law 92–463, 86 Stat. 770) notice is hereby given of the following Advisory Committee meeting: Environmental Management Site-Specific Advisory Board (EM SSAB), Oak Ridge Reservation.

**DATES:** Wednesday, March 13, 1996: 6:00 pm–9:00 pm.

**ADDRESS:** Jacobs Engineering Group, Inc. Building, Einstein Conference Room, 125 Broadway, Oak Ridge, Tennessee.

**FOR FURTHER INFORMATION CONTACT:** Sandy Perkins, Site-Specific Advisory Board Coordinator, Department of Energy Oak Ridge Operations Office, 105 Broadway, Oak Ridge, TN 37830, (423) 576–1590.

**SUPPLEMENTARY INFORMATION:** *Purpose of the Board:* The purpose of the Board is to make recommendations to DOE and its regulators in the areas of environmental restoration, waste management, and related activities.

Tentative Agenda:

*March Meeting Topics*

The Board will meet to develop their independent recommendation regarding the rankings for the Environmental Management Risk Based Prioritization system for the Oak Ridge Reservation.

*Public Participation:* The meeting is open to the public. Written statements may be filed with the Committee either before or after the meeting.

Individuals who wish to make oral statements pertaining to agenda items should contact Sandy Perkins at the address or telephone number listed above. Requests must be received 5 days prior to the meeting and reasonable provision will be made to include the presentation in the agenda. The Designated Federal Official is empowered to conduct the meeting in a fashion that will facilitate the orderly conduct of business. Each individual wishing to make public comment will

be provided a maximum of 5 minutes to present their comments.

*Minutes:* The minutes of this meeting will be available for public review and copying at the Freedom of Information Public Reading Room, 1E–190, Forrestal Building, 1000 Independence Avenue SW., Washington, DC 20585 between 9:00 a.m. and 4 p.m., Monday-Friday, except Federal holidays. Minutes will also be available at the Department of Energy's Information Resource Center at 105 Broadway, Oak Ridge, TN between 8:30 am and 5:00 pm on Monday, Wednesday, and Friday; 8:30 am and 7:00 pm on Tuesday and Thursday; and 9:00 am and 1:00 pm on Saturday, or by writing to Sandy Perkins, Department of Energy Oak Ridge Operations Office, 105 Broadway, Oak Ridge, TN 37830, or by calling her at (423) 576–1590.

Issued at Washington, DC on February 23, 1996.

Rachel Murphy Samuel,

*Acting Deputy Advisory Committee Management Officer.*

[FR Doc. 96–4697 Filed 2–28–96; 8:45 am]

BILLING CODE 6450–01–P

## Office of Energy Efficiency and Renewable Energy

### State Energy Advisory Board; Meeting

**AGENCY:** Department of Energy.

**ACTION:** Notice of open meeting.

**SUMMARY:** Pursuant to the provisions of the Federal Advisory Committee Act (Public Law 92–463; 86 Stat. 770), notice is hereby given of the following meeting: State Energy Advisory Board.

*Date and Time:* April 11–12, 1996 from 9:00 am to 5:00 pm.

*Place:* The Madison Hotel, 15th and M Streets, Washington, DC, 20005.

**FOR FURTHER INFORMATION CONTACT:** William J. Raup, Office of Technical and Financial Assistance (EE–50), Energy Efficiency and Renewable Energy, U.S. Department of Energy, Washington, DC 20585, Telephone 202/586–2214.

**SUPPLEMENTARY INFORMATION:**

*Purpose of the Board:* To make recommendations to the Assistant Secretary for Energy Efficiency and Renewable Energy regarding goals and objectives and programmatic and administrative policies, and to otherwise carry out the Board's responsibilities as designated in the State Energy Efficiency Programs Improvement Act of 1990 (P.L. 101–440).

*Tentative Agenda:* Briefings on, and discussions of:

- The FY1997 Federal budget request for Energy Efficiency and Renewable Energy programs.
- Issues related to restructuring initiatives within the electric utility industry.
- Review and approval of any committee activity.

*Public Participation:* The meeting is open to the public. Written statements may be filed with the Board either before or after the meeting. Members of the public who wish to make oral statements pertaining to agenda items should contact William J. Raup at the address or telephone number listed above. Requests to make oral presentations must be received five days prior to the meeting; reasonable provision will be made to include the statements in the agenda. The Chair of the Board is empowered to conduct the meeting in a fashion that will facilitate the orderly conduct of business.

*Minutes:* The minutes of the meeting will be available for public review and copying within 30 days at the Freedom of Information Public Reading Room, 1E–190, Forrestal Building, 1000 Independence Avenue SW., Washington, DC, between 9 a.m. and 4 p.m., Monday through Friday, except Federal holidays.

Issued at Washington, DC, on February 26, 1996.

Rachel M. Samuel,

*Acting Deputy Advisory Committee Management Officer.*

[FR Doc. 96–4698 Filed 2–28–96; 8:45 am]

BILLING CODE 6450–01–P

## Federal Energy Regulatory Commission

**[Docket Nos. ER96–670–000 and EL96–33–000]**

### Allegheny Generating Company; Notice of Initiation of Proceeding and Refund Effective Date

February 23, 1996.

Take notice that on February 20, 1996, the Commission issued an order in the above-indicated dockets initiating a proceeding in Docket No. EL96–33–000 under section 206 of the Federal Power Act.

The refund effective date in Docket No. EL96–33–000 will be 60 days after publication of this notice in the Federal Register.

Lois D. Cashell,

*Secretary.*

[FR Doc. 96–4641 Filed 2–28–96; 8:45 am]

BILLING CODE 6717–01–M

**[Docket No. CP96–41–001]**

### Colorado Interstate Gas Company; Notice of Petition to Amend

February 23, 1996.

Take notice that on February 22, 1996, Colorado Interstate Gas Company (CIG), P.O. Box 1087, Colorado Springs, Colorado 80944, filed in Docket No. CP96–41–001 a petition to amend its application filed in Docket No. CP96–41–000 to delete a residue line extending from a third party's processing plant (Warren Plant) to CIG's main line in Beaver County, Oklahoma from those facilities CIG wishes to transfer to its affiliate, CIG Field Services (Field Services), all as more fully set forth in the petition which is on file with the Commission and open to public inspection.

CIG states that the subject of this amendment is an 18-inch, 858 foot facility found in the area of the Mocane Compressor Station in Beaver County, Oklahoma, leading from the Warren plant to CIG's main transmission line. It is indicated that gas is delivered to the Warren plant from both CIG and a third party for processing. It is stated that subsequent to processing, the gas can enter CIG's system through the residue line or can flow on facilities of a third party without ever reaching CIG's facilities. CIG avers that, after implementation of the CIG-Field Services spin down proposal, by retaining the residue line, the potential for rate stacking for service would be eliminated in transactions where gas is delivered to the plant by a party other than Field Services and then delivered from the Warren Plant for transportation on CIG's system.

CIG estimates a book value of the residue line to be retained at $7,915, as of December 31, 1994. No other changes are proposed in CIG's original application.

Any person desiring to be heard or to make any protest with reference to said petition to amend should on or before March 4, 1996, file with the Federal Energy Regulatory Commission, Washington, DC 20426, a motion to intervene or a protest in accordance with the requirements of the Commissions's Rules of Practice and Procedure (18 CFR 385.214 or 385.211) and the Regulations under the Natural Gas Act (18 CFR 157.10). All protests filed with the Commission will be considered by it in determining the appropriate action to be taken but will not serve to make the protestants parties to the proceeding. Any person wishing to become a party to a proceeding or to participate as a party in any hearing

therein must file a motion to intervene in accordance with the Commission's Rules.

Lois D. Cashell,

*Secretary.*

[FR Doc. 96–4636 Filed 2–28–96; 8:45 am]

BILLING CODE 6717–01–M

**[Docket No. ER96–734–000]**

## Energy Marketing Services, Inc.; Notice of Issuance of Order

February 23, 1996.

On December 22, 1995, Energy Marketing Services, Inc. (EMSI) submitted for filing a rate schedule under which EMSI will engage in wholesale electric power and energy transactions as a marketer. EMSI also requested waiver of various Commission regulations. In particular, EMSI requested that the Commission grant blanket approval under 18 CFR part 34 of all future issuances of securities and assumptions of liability by EMSI.

On February 13, 1996, pursuant to delegated authority, the Director, Division of Applications, Office of Electric Power Regulation, granted requests for blanket approval under Part 34, subject to the following:

Within thirty days of the date of the order, any person desiring to be heard or to protest the blanket approval of issuances of securities or assumptions of liability by EMSI should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 888 First Street, N.E., Washington, D.C. 20426, in accordance with rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214).

Absent a request for hearing within this period, EMSI is authorized to issue securities and assume obligations or liabilities as a guarantor, endorser, surety, or otherwise in respect of any security of another person; provided that such issuance or assumption is for some lawful object within the corporate purposes of the applicant, and compatible with the public interest, and is reasonably necessary or appropriate for such purposes.

The Commission reserves the right to require a further showing that neither public nor private interests will be adversely affected by continued approval of EMSI's issuances of securities or assumptions of liability.

Notice is hereby given that the deadline for filing motions to intervene or protests, as set forth above, is March 14, 1996.

Copies of the full text of the order are available from the Commission's Public Reference Branch, 888 First Street, N.E., Washington, D.C. 20426.

Lois D. Cashell,

*Secretary.*

[FR Doc. 96–4635 Filed 2–28–96; 8:45 am]

BILLING CODE 6717–01–M

**[Docket Nos. ER96–586–000, ER95–112–001, and ER95–1001–000 and Docket No. ER95–1615–000]**

## Entergy Services, Inc., and Entergy Power Marketing Corp.; Notice of Issuance of Order

February 23, 1996.

On August 30, 1995, Entergy Power Marketing Corp. (Entergy Marketing) filed an application for authorization to sell power at market-based rates, and for certain waivers and authorizations. In particular, Entergy Marketing requested that the Commission grant blanket approval under 18 CFR Part 34 of all future issuances of securities and assumptions of liabilities by Entergy Marketing. On February 14, 1996, the Commission issued an Order Accepting for Filing and Suspending Proposed Transmission Tariffs (as Modified), Establishing Hearing Procedures, Accepting for Filing (Without Suspending or Hearing) Compliance Filing, Conditionally Accepting for Filing Marketing-Based Rates, and Granting Waivers and Authorizations (Order), in the above-docketed proceeding.

The Commission's February 14, 1996 Order granted the request for blanket approval under Part 34, subject to the conditions found in Ordering Paragraphs (L), (M), and (O):

(L) Without 30 days of the date of this order, any person desiring to be heard or to protest the Commission's blanket approval of issuances of securities or assumptions of liabilities by Entergy Marketing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 888 First Street, N.E., Washington, D.C. 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure, 18 CFR 385.211 and 385.214.

(M) Absent a request to be heard within the period set forth in Ordering Paragraph (L) above, Entergy Marketing is hereby authorized to issue securities and to assume obligations or liabilities as guarantor, endorser, surety or otherwise in respect of any security of another person; provided that such issue or assumption is for some lawful object within the corporate purposes of the applicant, compatible with the public interest, and reasonably necessary or appropriate for such purposes.

(O) The Commission reserves the right to modify this order to require a further showing that neither public nor private interests will be adversely affected by continued Commission approval of Entergy Marketing's issuances of securities or assumptions of liabilities * * *.

Notice is hereby given that the deadline for filing motions to intervene or protests, as set forth above, is March 15, 1996.

Copies of the full text of the Order are available from the Commission's Public Reference Branch, 888 First Street NE., Washington, D.C. 20426.

Lois D. Cashell,

*Secretary.*

[FR Doc. 96–4639 Filed 2–28–96; 8:45 am]

BILLING CODE 6717–01–M

**[Docket No. RP96–123–001]**

## Florida Gas Transmission Company; Notice of Proposed Changes in FERC Gas Tariff

February 23, 1996.

Take notice that on February 21, 1996, Florida Gas Transmission Company (FGT) tendered for filing as part of its FERC Gas Tariff, Third Revised Volume No. 1, the following tariff sheets to become effective April 1, 1996:

Substitute Third Revised Sheet No. 2
Substitute First Revised Sheet No. 134
Substitute Second Revised Sheet No. 135
Substitute Third Revised Sheet No. 452
Substitute Second Revised Sheet No. 467
Second Revised Sheet No. 494
Second Revised Sheet No. 503
Substitute Second Revised Sheet No. 530

FGT states on January 26, 1996, it filed in Docket No. RP96–123–000 (January 26 Filing) certain changes to its Tariff generally intended to modify or clarify certain provisions in conformance with previous tariff changes filed and accepted by the Federal Energy Regulatory Commission. Several parties filed protests to FGT's January 26 Filing.[1] FGT is filing concurrently herewith an answer (Answer) to respond to certain issues and questions raised in the protests and to clarify certain misunderstandings. The instant filing is submitted to amend the January 26 Filing in conjunction with that Answer and includes the changes described therein.

Any person desiring to protest said filing should file a protest with the Federal Energy Regulatory Commission,

[1] Florida Cities, Florida Municipal Natural Gas Association, Indicated Shippers, and Peoples Gas System, Inc.

888 First Street NE, Washington, D.C., 20426, in accordance with Section 385.211 of the Commission's Rules and Regulations. All such protests must be filed as provided in Section 154.210 of the Commission's Regulations. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Copies of this filing are on file with the Commission and are available for public inspection in the Public Reference Room.

Lois D. Cashell,

*Secretary.*

[FR Doc. 96–4603 Filed 2–28–96; 8:45 am]

BILLING CODE 6717–01–M

**[Docket No. ER95–1096–000]**

## Pacific Power Marketing, Inc.; Notice of Issuance of Order

February 23, 1996.

On May 25, 1995, Pacific Power Marketing, Inc. (Pacific Marketing) filed an application for authorization to sell power at market-based rates, and for certain waivers and authorizations. In particular, Pacific Marketing requested that the Commission grant blanket approval under 18 CFR Part 34 of all future issuances of securities and assumptions of liabilities by Pacific Marketing. On February 14, 1996, the Commission issued an Order Modifying Earlier Order, Conditionally Accepting For Filing Market-Based Rates, And Granting And Denying Requests for Waivers and Authorizations (Order), in the above-docketed proceeding.

The Commission's February 14, 1996 Order granted the request for blanket approval under Part 34, subject to the conditions found in Ordering Paragraphs (G), (H), and (J):

(G) Within 30 days of the date of this order, any person desiring to be heard or to protest the Commission's blanket approval of issuances of securities or assumptions of liabilities by Pacific Marketing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure, 18 CFR 385.211 and 385.214 (1995).

(H) Absent a request to be heard within the period set forth in Ordering Paragraph (G) above, Pacific Marketing is hereby authorized to issue securities and to assume obligations or liabilities as guarantor, endorser, surety or otherwise in respect of any security of another person; provided that such issues or assumption is for some lawful object within the corporate purposes of the applicant, compatible with the public interest, and reasonably necessary or appropriate for such purposes.

(J) The Commission reserves the right to modify this order to require a further showing that neither public nor private interests will be adversely affected by continued Commission approval of Pacific Marketing's issuances of securities or assumptions of liabilities.

* * *

Notices is hereby given that the deadline for filing motions to intervene or protests, as set forth above, is March 15, 1996.

Copies of the full text of the Order are available from the Commission's Public Reference Branch, 888 First Street NE., Washington, DC 20426.

Lois D. Cashell,

*Secretary.*

[FR Doc. 96–4634 Filed 2–28–96; 8:45 am]

BILLING CODE 6717–01–M

**[Docket No. ER96–342–000]**

## Seagull Power Services, Inc.; Notice of Issuance of Order

February 23, 1996.

On November 13, 1995, as amended January 5, 1996, Seagull Power Services, Inc. (Seagull) submitted for filing a rate schedule under which Seagull will engage in wholesale electric power and energy transactions as a marketer. Seagull also requested waiver of various Commission regulations. In particular, Seagull requested that the Commission grant blanket approval under 18 CFR Part 34 of all future issuances of securities and assumptions of liability by Seagull.

On February 15, 1996, pursuant to delegated authority, the Director, Division of Applications, Office of Electric Power Regulation, granted requests for blanket approval under Part 34, subject to the following:

Within thirty days of the date of the order, any person desiring to be heard or to protest the blanket approval of issuances of securities or assumptions of liability by Seagull should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214).

Absent a request for hearing within this period, Seagull is authorized to issue securities and assume obligations or liabilities as a guarantor, endorser, surety, or otherwise in respect of any security of another person; provided that such issuance or assumption is for some lawful object within the corporate purposes of the applicant, and compatible with the public interest, and is reasonably necessary or appropriate for such purposes.

The Commission reserves the right to require a further showing that neither public nor private interests will be adversely affected by continued approval of Seagull's issuances of securities or assumptions of liability.

Notice is hereby given that the deadline for filing motions to intervene or protests, as set forth above, is March 18, 1996.

Copies of the full text of the order are available from the Commission's Public Reference Branch, 888 First Street, NE., Washington, DC 20426.

Lois D. Cashell,

*Secretary.*

[FR Doc. 96–4637 Filed 2–28–96; 8:45 am]

BILLING CODE 6717–01–M

**[Docket No. GT96–48–000]**

## Transcontinental Gas Pipe Line Corporation; Notice of Refund Report

February 23, 1996.

Take notice that on February 12, 1996, Transcontinental Gas Pipe Line Corporation (Transco) tendered for filing with the Commission a refund report in accordance with Section 4 of Transco's Rate Schedule LSS and Section 3 of Transco's Rate Schedule GSS.

Transco states that on January 29, 1996, it refunded $12,456,000.00, inclusive of interest, to its LSS and GSS customers. The refund was due Transco's customers from a CNG Transmission Corporation refund in Docket Nos. RP94–96 and RP94–213 (consolidated) for the period July 1, 1994 through October 31, 1995.

Any person desiring to be heard or to protest said filing should file a motion to intervene protest with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with Rules 211 or 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214). All such motions or protests should be filed on or before March 1, 1996. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on

file with the Commission and are available for public inspection.

Lois D. Cashell,

*Secretary.*

[FR Doc. 96–4604 Filed 2–28–96; 8:45 am]

BILLING CODE 6717–01–M

**[Docket No. TM96–9–29–000]**

## Transcontinental Gas Pipe Line Corporation; Notice of Proposed Changes in FERC Gas Tariff

February 23, 1996.

Take notice that on February 16, 1996, Transcontinental Gas Pipe Line Corporation (Transco) tendered for filing to become part of its FERC Gas Tariff, Third Revised Volume No. 1, Twenty-fifth Revised Sixth Revised Sheet No. 28, to be effective on February 1, 1996.

Transco states that the purpose of the instant filing is to track rate changes attributable to storage service purchased from Texas Eastern Transmission Corporation (TETCO) under its Rate Schedule X–28 the costs to which are included in the rates and charges payable under Transco's Rate Schedule S–2. This tracking filing is being made pursuant to Section 26 of the General Terms and Conditions of Transco's Volume No. 1 Tariff.

Included in Appendix B attached to the filing is an explanation of the rate changes and details regarding the computation of the revised Rate Schedule S–2 rates.

Transco states that copies of the filing are being mailed to each of its S–2 customers and interested State Commissions.

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 888 First Street, Washington, D.C. 20426, in accordance with Sections 385.214 and 385.211 of the Commission's Rules and Regulations. All such motions or protests must be filed as provided in Section 154.210 of the Commission's Regulations. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing area on file with the Commission and are available for public inspection in the Public Reference Room.

Lois D. Cashell,

*Secretary.*

[FR Doc. 96–4606 Filed 2–28–96; 8:45 am]

BILLING CODE 6717–01–M

**[Docket No. RP96–146–000]**

## West Texas Gas, Inc.; Notice of Proposed Changes in FERC Gas Tariff

February 23, 1996.

Take notice that on February 20, 1996, West Texas Gas, Inc. (WTG), tendered for filing proposed changes in its FERC Gas Tariff, First Revised Volume No. 1. WTG submitted the following tariff sheets with a proposed effective date of February 20, 1996:

First Revised Sheet No. 22
First Revised Sheet No. 24
First Revised Sheet No. 25
First Revised Sheet No. 27
First Revised Sheet No. 28
First Revised Sheet Nos. 30 through 32
Original Sheet Nos. 32A through 32PP

WTG submitted the tariff sheets to comply with Order No. 582, issued September 28, 1995 in Docket No. RM95–3–000. Order No. 582 directed WTG to incorporate into its tariff the Commission's Regulations pertaining to Purchased Gas Adjustments, 18 CFR Section 154.111, and Sections 154.301 through 154.310, which were removed from the Commission's Regulations pursuant to Order No. 582.

WTG requests any waivers necessary to permit the tariff sheets to be effective February 20, 1996.

WTG states that copies of the filing were served upon WTG's jurisdictional customers and interested state commissions.

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 888 First Street NE., Washington, DC 20426, in accordance with Sections 385.214 and 385.211 of the Commission's Rules and Regulations. All such motions or protests must be filed as provided in Section 154.210 of the Commission's Regulations. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make the protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection in the Public Reference Room.

Lois D. Cashell,

*Secretary.*

[FR Doc. 96–4605 Filed 2–28–96; 8:45 am]

BILLING CODE 6717–01–M

**[Docket Nos. ER96–459–000 and ER96–458–000]**

## Western Resources, Inc., and Westar Electric Marketing, Inc.; Notice of Issuance of Order

February 23, 1996.

On November 29, 1995, Westar Electric Marketing, Inc. (Westar) filed an application for authorization to sell power at market-based rates, and for certain waivers and authorizations. In particular, Westar requested that the Commission grant blanket approval under 18 CFR Part 34 of all future issuances of securities and assumptions of liabilities by Westar. On February 14, 1996, the Commission issued an Order Modifying Earlier Order, Conditionally Accepting for Filing Market-Based Rates, and Granting Waivers and Authorizations (Order), in the above-docketed proceeding.

The Commission's February 14, 1996 Order granted the request for blanket approval under Part 34, subject to the conditions found in Ordering Paragraphs (E), (F), and (H):

(E) Within 30 days of the date of this order, any person desiring to be heard or to protest the Commission's blanket approval of issuances of securities or assumptions of liabilities by Westar should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 888 First Street, N.E., Washington, D.C. 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure, 18 CFR 385.211 and 385.214.

(F) Absent a request to be heard within the period set forth in Ordering Paragraph (E) above, Westar is hereby authorized to issue securities and to assume obligations or liabilities as guarantor, endorser, surety or otherwise in respect of any security of another person; provided that such issue or assumption is for some lawful object within the corporate purposes of the applicant, compatible with the public interest, and reasonably necessary or appropriate for such purposes.

(H) The Commission reserves the right to modify this order to require a further showing that neither public nor private interests will be adversely affected by continued Commission approval of Westar's issuances of securities or assumptions of liabilities * * *.

Notice is hereby given that the deadline for filing motions to intervene or protests, as set forth above, is March 15, 1996.

Copies of the full text of the Order area available from the Commission's

Public Reference Branch, 888 First Street, N.E., Washington, D.C. 20426.

Lois D. Cashell,

*Secretary.*

FR Doc. 96–4638 Filed 2–28–96; 8:45 am]

BILLING CODE 6717–01–M

**[Docket No. RP96–145–000]**

## Williams Natural Gas Company; Notice of Proposed Changes in FERC Gas Tariff

February 23, 1996.

Take notice that on February 16, 1996, Williams Natural Gas Company (WNG) tendered for filing, pursuant to Article 9.7(d) of the General Terms and Conditions of its FERC Gas Tariff, its report of net revenue received from cash-outs. WNG proposes to make the refund upon Commission approval of its calculation method as set out in this report.

WNG states that pursuant to the cash-out mechanism in Article 9.7(a)(iv) of WNG's FERC, Shippers were given the option of resolving their imbalances by the end of the calendar month following the month in which the imbalance occurred by cashing-out such imbalances at 100% of the spot market price applicable to WNG as published in the first issue of Inside FERC's Gas Market Report for the month in which the imbalance occurred. Net monthly imbalances which were not resolved by the end of the second month following the month in which the imbalance occurred and which exceeded the tolerance specified in Article 9.7(b) were cashed-out at a premium or discount from the spot price according to the schedules set forth in Article 9.7(c). Consistent with its filing made January 20, 1995 in Docket No. RP95–132, WNG is filing its report of net revenue (sales less purchase cost) received from cash-outs.

WNG states that a copy of its filing was served on all jurisdictional customers and interested state commissions.

Any person desiring to be heard or to protest this filing should file a motion to intervene or a protest with the Federal Energy Regulatory commission, 888 First Street, NE., Washington, DC 20426, in accordance with Sections 385.214 and 385.211 of the Commission's Rules and Regulations. All such motions or protests must be filed as provided in Section 154.210 of the Commission's Regulations. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection in the Public Reference Room.

Lois D. Cashell,

*Secretary.*

[FR Doc. 96–4602 Filed 2–28–96; 8:45 am]

BILLING CODE 6717–01–M

**[Docket Nos. ER94–475–006, ER95–1510–001, and EL96–29–000; Docket No. ER94–108–006]**

## Wisconsin Power & Light Company, Heartland Energy Services, Inc.; Notice of Initiation of Proceeding and Refund Effective Date

February 23, 1996

Take notice that on February 16, 1996, the Commission issued an order in the above-indicated dockets initiating a proceeding in Docket No. EL96–29–000 under section 206 of the Federal Power Act.

The refund effective date in Docket No. EL96–29–000 will be 60 days after publication of this notice in the Federal Register.

Lois D. Cashell,

*Secretary.*

[FR Doc. 96–4640 Filed 2–28–96; 8:45 am]

BILLING CODE 6717–01–M

**[Docket No. EG96–43–000, et al.]**

## Xuwen Jieda Electricity Generating Co. Ltd. et al.; Electric Rate and Corporate Regulation Filings

February 22, 1996.

Take notice that the following filings have been made with the Commission:

1. Xuwen Jieda Electricity Generating Co. Ltd.

[Docket No. EG96–43–000]

On February 8, 1996, Xuwen Jieda Electricity Generating Co. Ltd. (''Applicant''), whose business address is Haian Development Zone, Xuwen County, Guangdong Province, People's Republic of China, filed with the Federal Energy Regulatory Commission an application for determination of exempt wholesale generator status pursuant to Part 365 of the Commission's Regulations.

Applicant intends, directly or indirectly, to own or operate all or part of eligible facilities, including without limitation a 12.45 MW electric generating facility located at Haian in the People's Republic of China.

*Comment date:* March 14, 1996, in accordance with Standard Paragraph E at the end of this notice. The Commission will limit its consideration of comments to those that concern the adequacy or accuracy of the application.

2. Huidong Dongda Electric Generating Company Ltd.

[Docket No. EG96–44–000]

On February 8, 1996, Huidong Dongda Electric Generating Company Limited (''Applicant''), whose business address is Town of Ping Shan, Huidong County, Guangdong Province, People's Republic of China, filed with the Federal Energy Regulatory Commission an application for determination of exempt wholesale generator status pursuant to Part 365 of the Commission's Regulations.

Applicant intends, directly or indirectly, to own or operate all or part of eligible facilities, including without limitation a 24.9 MW electric generating facility located in Huidong County in the People's Republic of China.

*Comment date:* March 14, 1996, in accordance with Standard Paragraph E at the end of this notice. The Commission will limit its consideration of comments to those that concern the adequacy or accuracy of the application.

3. Gulf Power Company

[Docket No. EL96–27–000]

Take notice that on February 9, 1996, Gulf Power Company tendered for filing an amendment to its December 29, 1995, filing in the above-referenced docket.

*Comment date:* March 7, 1996, in accordance with Standard Paragraph E at the end of this notice.

4. Nevada Power Company

[Docket No. ER96–133–000]

Take notice that on January 25, 1996, Nevada Power Company tendered for filing an amendment in the above-referenced docket.

*Comment date:* March 6, 1996, in accordance with Standard Paragraph E at the end of this notice.

5. Orange and Rockland Utilities, Inc.

[Docket No. ER96–820–000]

Take notice that on February 8, 1996, Orange and Rockland Utilities, Inc. tendered for filing an amendment in the above-referenced docket.

*Comment date:* March 7, 1996, in accordance with Standard Paragraph E at the end of this notice.

6. American Electric Service Corporation

[Docket No. ER96–956–000]

Take notice that on February 9, 1996, American Electric Service Company tendered for filing a Certificate of

Concurrence in the above-referenced docket.

*Comment date:* March 7, 1996, in accordance with Standard Paragraph E at the end of this notice.

7. Eastex Power Marketing, Inc.

[Docket No. ER96–1045–000]

Take notice that on February 7, 1996, Eastex Power Marketing, Inc. (EPMI) tendered for filing an amendment to its electric service tariff, FERC Electric Rate Schedule No. 1. The amendment authorizes sales to be made to any affiliate having a FERC rate schedule permitting sales for resale by such affiliate at rates established by agreement between the purchaser and the affiliate. EPMI requests an effective date of March 1, 1996 for the rate schedule.

*Comment date:* March 7, 1996, in accordance with Standard Paragraph E at the end of this notice.

8. Wisconsin Public Service Corporation

[Docket No. ER96–1061–000]

Take notice that on February 12, 1996, Wisconsin Public Service Corporation (WPSC), tendered for filing an executed Transmission Service Agreement between WPSC and Citizens Lehman Power Sales. The Agreement provides for transmission service under the Comparable Transmission Service Tariff, FERC Original Volume No. 7.

WPSC asks that the agreement become effective retroactively to the date of execution by WPSC.

*Comment date:* March 7, 1996, in accordance with Standard Paragraph E at the end of this notice.

9. Southern Company Services, Inc.

[Docket No. ER96–1062–000]

Take notice that on February 13, 1996, Southern Company Services, Inc. (SCE), acting on behalf of Alabama Power Company, Georgia Power Company, Gulf Power Company, Mississippi Power Company, and Savannah Electric and Power Company (collectively referred to as ''Southern Companies'') filed three (3) service agreements between SCE, as agent of the Southern Companies, and (i) Southwestern Public Service Company, (ii) the City of Tallahassee, and (iii) Duke Power Company for non-firm transmission service under the Point-to-Point Transmission Service Tariff of Southern Companies.

*Comment date:* March 7, 1996, in accordance with Standard Paragraph E at the end of this notice.

10. Houston Lighting & Power Company

[Docket No. ER96–1064–000]

Take notice that on February 14, 1996, Houston Lighting & Power Company (HL&P) tendered for filing an executed transmission service agreement (TSA) with Destec Power Services, Inc. (Destec) for Economy Energy and Emergency Power Transmission Service under HL&P's FERC Electric Tariff, Original Volume No. 1, for Transmission Service To, From and Over Certain HVDC Interconnections. HL&P has requested an effective date of February 13, 1996.

Copies of the filing were served on Destec and the Public Utility Commission of Texas.

*Comment date:* March 7, 1996, in accordance with Standard Paragraph E at the end of this notice.

11. Baltimore Gas and Electric Co.

[Docket No. ER96–1065–000]

Take notice that on February 14, 1996, Baltimore Gas and Electric Company (BGE), tendered for filing as an initial rate schedule comprised of an Energy Sales Tariff and related schedules and exhibits for the sale of energy by BGE (Tariff). The Tariff provides for the sale by BGE of energy from its system (system energy) to customers on an hourly, daily, weekly, monthly, or yearly basis (transaction). Each transaction is fully interruptible. BGE states that the timing of the transactions cannot be accurately estimated but that BGE will provide the system energy to customers at a negotiated rate upon which the parties will agree prior to each transaction when it is economical for each party to do so. Customers will pay a Reservation Charge to BGE for each transaction in an amount equal to the megawatthours of system energy reserved by BGE during a transaction multiplied by a Reservation Charge Rate negotiated prior to each transaction. The Reservation Charge Rate will be subject to a cost justified ceiling. Customers will pay a charge for each transaction in an amount equal to the megawatthours delivered by BGE during and transaction multiplied by an Energy Charge Rate. The Energy Charge Rate will be BGE's estimated incremental cost to supply the transaction, to be charged for each hour of the transaction in which BGE supplies energy.

*Comment date:* March 7, 1996, in accordance with Standard Paragraph E at the end of this notice.

12. Central Illinois Light Company

[Docket No. ER96–1075–000]

Take notice that on February 16, 1996, Central Illinois Light Company (CILCO), 300 Liberty Street, Peoria, Illinois 61202, tendered for filing with the Commission an Amendment to its Point-to-Point Open Access Tariff to expand the definition of eligible customers.

CILCO requested an effective date of March 15, 1996.

Copies of the filing were served on the Illinois Commerce Commission.

*Comment date:* March 7, 1996, in accordance with Standard Paragraph E at the end of this notice.

13. Indianapolis Power & Light Company

[Docket No. ER96–1076–000]

Take notice that on February 16, 1996, Indianapolis Power & Light Company (IPL), tendered for filing three initial rate schedules consisting of enabling agreements between IPL and LG&E Power Marketing, Inc., IPL and Louis Dreyfus Electric Power, Inc., and IPL and Catex Vitol Electric, L.L.C., respectively, pursuant to which they will engage in general purpose energy and negotiated capacity sales and purchase transactions. IPL requests waiver of the 60-day notice requirement to allow service to commence March 1, 1996 under the respective agreements.

Copies of this filing were sent to the Indiana Utility Regulatory Commission and LG&E Power Marketing, Inc., Louis Dreyfus Electric Power, Inc., and Catex Vitol Electric, L.L.C.

*Comment date:* March 7, 1996, in accordance with Standard Paragraph E at the end of this notice.

14. Louisville Gas and Electric Company

[Docket No. ER96–1077–000]

Take notice that on February 16, 1996, Louisville Gas and Electric Company, tendered for filing copies of service agreements between Louisville Gas and Electric Company and Electric Clearinghouse, Inc. under Rate GSS.

*Comment date:* March 7, 1996, in accordance with Standard Paragraph E at the end of this notice.

15. Entergy Services, Inc.

[Docket No. ER96–1078–000]

Take notice that on February 16, 1996, Entergy Services, Inc. (Entergy Services), acting as agent for Gulf States Utilities Company (GSU), submitted for filing a Letter Agreement between GSU and Sam Rayburn G&T Electric Coop., Inc. (SRG&T). The Letter Agreement establishes a new delivery point between GSU and SRG&T. In order to tap establish the new delivery point it will be necessary to relocate certain facilities. To the extent necessary,

Entergy Services requests a waiver of the notice requirements of the Federal Power Act and the Commission's regulations to permit the Letter Agreement to become effective March 1, 1996.

*Comment date:* March 7, 1996, in accordance with Standard Paragraph E at the end of this notice.

16. Entergy Services, Inc.

[Docket No. ER96–1079–000]

Take notice that on February 16, 1996, Entergy Services, Inc. (Entergy Services), acting as agent for Arkansas Power & Light Company (AP&L), submitted for filing the Fourth Amendment to the Power Coordination, Interchange and Transmission Agreement between AP&L and the City of Osceola, Arkansas (City) which provides for an increase in the maximum capacity provided at existing points of delivery. Entergy Services request an effective date of May 1, 1996.

*Comment date:* March 7, 1996, in accordance with Standard Paragraph E at the end of this notice.

17. Sonat Power Marketing, Inc.

[Docket No. ER96–1081–000]

Take notice that on February 16, 1996, Sonat Power Marketing, Inc. (SPM), tendered for filing with the Federal Energy Regulatory Commission a request for Commission approval of SPM's acceptance as a member of the Western Systems Power Pool (WSPP). SPM was notified by letter dated February 16, 1996, that its application to join the WSPP had been approved by the WSPP Executive Committee. SPM requests that the Commission waive its prior notice requirement to allow its WSPP membership to become effective February 16, 1996.

A copy of the filing was served on the WSPP.

*Comment date:* March 7, 1996, in accordance with Standard Paragraph E at the end of this notice.

18. UtiliCorp United Inc.

[Docket No. ER96–1082–000]

Take notice that on February 16, 1996, UtiliCorp United Inc. tendered for filing on behalf of its operating division, WestPlains Energy-Kansas, a Service Agreement under its Power Sales Tariff, FERC Electric Tariff Original Volume No. 12, with *Wisconsin Electric Power Company*. The Service Agreement provides for the sale of capacity and energy by WestPlains Energy-Kansas to *Wisconsin Electric Power Company* pursuant to the tariff.

UtiliCorp also has tendered for filing a Certificate of Concurrence by *Wisconsin Electric Power Company*.

UtiliCorp requests waiver of the Commission's regulations to permit the Service Agreement to become effective in accordance with its terms.

*Comment date:* March 7, 1996, in accordance with Standard Paragraph E at the end of this notice.

19. UtiliCorp United Inc.

[Docket No. ER96–1083–000]

Take notice that on February 16, 1996, UtiliCorp United Inc., tendered for filing on behalf of its operating division, Missouri Public Service, a Service Agreement under its Power Sales Tariff, FERC Electric Tariff Original Volume No. 10, with *Wisconsin Electric Power Company*. The Service Agreement provides for the sale of capacity and energy by Missouri Public Service to *Wisconsin Electric Power Company* pursuant to the tariff.

UtiliCorp also has tendered for filing a Certificate of Concurrence by *Wisconsin Electric Power Company*.

UtiliCorp requests waiver of the Commission's regulations to permit the Service Agreement to become effective in accordance with its terms.

*Comment date:* March 7, 1996, in accordance with Standard Paragraph E at the end of this notice.

20. Texas Utilities Electric Company

[Docket No. ER96–1084–000]

Take notice that on February 16, 1996, Texas Utilities Electric Company (TU Electric), tendered for filing five executed transmission service agreements (TSA's) with Central & South West Services, Inc., Louis Dreyfus Electric Power Inc., Citizens Lehman Power Sales and Valero Power Services Company for certain Economy Energy Transmission Service under TU Electric's Tariff for Transmission Service To, From and Over Certain HVDC Interconnections.

TU Electric requests an effective date for the TSA's that will permit them to become effective on or before the service commencement date under each of the five TSA's. Accordingly, TU Electric seeks waiver of the Commission's notice requirements. Copies of the filing were served on Central & South West Services, Inc., Louis Dreyfus Electric Power, Inc., Citizens Lehman Power Sales and Valero Power Services Company, as well as the Public Utility Commission of Texas.

*Comment date:* March 7, 1996, in accordance with Standard Paragraph E at the end of this notice.

21. South Carolina Electric & Gas Company

[Docket No. ER96–1085–000]

Take notice that on February 16, 1996, South Carolina Electric & Gas Company (SCE&G), tendered for filing a proposed (1) Negotiated Market Sales Tariff, (2) open access network transmission tariff, and (3) open access flexible point to point transmission service tariff. SCE&G states that the network and point to point tariffs strictly conform to the pro forma tariffs included an appendices in the Commission's Notice of Proposed Rulemaking in Docket No. RM95–8–000. SCE&G requests waiver of the Commission's notice requirements and that all three tariffs be placed into effect on the same date as soon as possible, preferably within 30 days or less, but in no event later than 60 days after the date of tender.

*Comment date:* March 7, 1996, in accordance with Standard Paragraph E at the end of this notice.

22. SCANA Energy Marketing, Inc.

[Docket No. ER96–1086–000]

Take notice that on February 16, 1996, SCANA Energy Marketing, Inc. (SCANA Energy), tendered for filing a petition for blanket authorization to act as a power marketer and for certain waivers of the Commission's regulations. SCANA Energy asks that these authorization and waivers be made effective on the date that the comparable transmission tariffs of its affiliate, South Carolina Electric & Gas Company, are accepted.

*Comment date:* March 7, 1996, in accordance with Standard Paragraph E at the end of this notice.

23. Wisconsin Public Service Corporation, WPS Energy Services, Inc., WPS Power Development, Inc.

[Docket No. ER96–1088–000]

Take notice that on February 16, 1996, Wisconsin Public Service Corporation (WPSC), WPS Energy Services, Inc. And WPS Power Development, Inc. (collectively, the WPSC Companies) each of Green Bay, Wisconsin, submitted requests for authorization to sell capacity and energy at market-based rates. In support of the requests, WPSC also submitted as a substitute for its currently effective open-access transmission tariffs new *pro forma* versions of the network and point-to-point transmission tariffs. The WPSC Companies request an April 17, 1996 effective date.

The WPSC Companies state that this filing has been posted in accordance with the Commission's regulations and that copies of the filing have been served upon the Wisconsin Public

Service Commission, the Michigan Public Service commission, and all persons listed on the official service lists in Docket No. ER95–1528–000.

*Comment date:* March 7, 1996, in accordance with Standard Paragraph E at the end of this notice.

Standard Paragraph:

E. Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 888 First Street, N.E., Washington, D.C. 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 18 CFR 385.214). All such motions or protests should be filed on or before the comment date. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,

*Secretary.*

[FR Doc. 96–4643 Filed 2–28–96; 8:45 am]

**BILLING CODE 6717–01–P**

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**[Docket No. CP96–183–000, et al.]**

## NorAm Gas Transmission Company, et al.; Natural Gas Certificate Filings

February 22, 1996.

Take notice that the following filings have been made with the Commission:

1. NorAm Gas Transmission Company

[Docket No. CP96–183–000]

Take notice that on February 12, 1996, NorAm Gas Transmission Company (NGT), 1600 Smith Street, Houston, Texas 77002, filed in Docket No. CP96–183–000 a request pursuant to Sections 157.205 and 157.211 of the Commission's Regulations under the Natural Gas Act (18 CFR 157.205, 157.211) for authorization to operate certain facilities in Arkansas under NGT's blanket certificate issued in Docket No. CP82–384–000, *et al.*, pursuant to Section 7 of the Natural Gas Act, all as more fully set forth in the request that is on file with the Commission and open to public inspection.

NGT proposes to operate an existing delivery tap on Line OM–1 to deliver gas to Arkla (Arkla), a distribution division of NorAm Energy Corp., who will deliver gas to a customer other than the right-of-way grantor for whom the tap was originally installed. The tap is located in Section 12, Township 15N, Range 31W, Washington County, Arkansas and will consist of a 2-inch delivery tap and first-cut regulator. NGT estimates the additional volumes to be delivered to this meter station will be approximately 85 MMBtu annually and 1 MMBtu peak day. NGT states there will be no new construction or costs associated with this application. NGT will transport gas to Arkla and provide service under its tariffs, that the volumes delivered are within Arkla's certificated entitlement and that NGT's tariff does not prohibit the addition of new delivery points. NGT also states that it has sufficient capacity to accomplish deliveries without detriment or disadvantage to its other customers.

*Comment date:* April 8, 1996, in accordance with Standard Paragraph G at the end of this notice.

2. Columbia Gas Transmission Corporation

[Docket No. CP96–189–000]

Take notice that on February 15, 1996, Columbia Gas Transmission Corporation (Columbia), 1700 MacCorkle Avenue, SE., Charleston, West Virginia 25314–1599, filed in Docket No. CP96–189–000 an application pursuant to Section 7(c) and 7(b) of the Natural Gas Act requesting authority to construct and operate certain replacement natural gas facilities and permission to abandon the facilities being replaced, all as more fully set forth in the application on file with the Commission and open to public inspection.

Columbia proposes to replace approximately 7.3 miles of 12-inch pipeline and appurtenances designated as Columbia's Line VM–108, located in Prince George and Sussex Counties, Virginia with approximately 7.3 miles of 20-inch pipeline and appurtenances. Columbia states that it had originally anticipated replacing only 6.3 miles of the 12-inch pipeline as part of its overall age and condition activities on its pipeline system. Columbia asserts that Virginia Natural Gas Company (VNG) requested a reassignment of design day deliveries of up to 28,525 Dth/d from its Newport News No. 1 Gate Station to its Norfolk Gate Station due to increased growth in market requirements in the Norfolk, Virginia area. Columbia further states that it determined that it could accommodate the shift in deliveries by increasing the pipe size of the 6.3-mile replacement from 12-inch to 20-inch and extending the replacement from 6.3 miles to 7.3 miles.

Columbia indicates that the cost of the anticipated 6.3 mile, 12-inch replacement was estimated to be $4,928,889 while the estimated cost to replace the 6.3 miles with 20-inch pipe is $6,436,250 and the cost of the additional 1.0 mile replacement of 12-inch pipe with 20-inch pipe is $1,016,785 for a total cost estimated to be $7,453,035. Columbia states that VNG has agreed to reimburse Columbia for 50% of the replacement cost for the construction of the 6.3-mile 20-inch pipeline section and 100% for the additional mile of pipe required to accommodate VNG's shift.

*Comment date:* March 14, 1996, in accordance with Standard Paragraph F at the end of this notice.

3. ANR Storage Company

[Docket No. CP96–190–000]

Take notice that on February 15, 1996, ANR Storage Company (ANR Storage), 500 Renaissance Center, Detroit, Michigan 48243, filed an application with the Commission in Docket No. CP96–190–000 pursuant to Section 7(b) of the Natural Gas Act (NGA) for permission and approval to abandon a storage service provided to Northern Indiana Public Service Company (NIPSCO), which was authorized in Docket No. CP78–432,[1] all as more fully set forth in the application which is open to the public for inspection.

ANR Storage proposes to abandon the storage service it provides to NIPSCO under ANR Storage's FERC Rate Schedule X–5. By letter dated June 30, 1994, NIPSCO informed ANR Storage of its intent to terminate the storage agreement as of March 31, 1996. ANR Storage requests approval to abandon Rate Schedule X–5 effective April 1, 1996. ANR Storage states that it would not abandon any facilities in this proposal.

*Comment date:* March 14, 1996, in accordance with Standard Paragraph F at the end of this notice.

4. Texas Eastern Transmission Corporation

[Docket No. CP96–194–000]

Take notice that on February 15, 1996, Texas Eastern Transmission Corporation (Texas Eastern), P.O. Box 1642, Houston, Texas 77251–1642, filed a petition for declaratory order in Docket No. CP96–194–000 requesting that the Commission confirm that deliveries of natural gas to Interstate Energy Company (IEC) from a proposed delivery point do not constitute a bypass of service, all as more fully set forth in the petition which is on file with the Commission and open to public inspection.

[1] 8 FERC ¶ 61,059 (1979).

It is stated that IEC has requested that Texas Eastern install one 12-inch valve and 12-inch check valve each and electronic gas measurement equipment (EGM) on Texas Eastern's 30-inch Line No. 19 and 24-inch Line No. 12 in Bucks County, Pennsylvania so that Texas Eastern may initiate interruptible service of up to 250,000 dt equivalent of natural gas per day to IEC under its Rate Schedule IT–1. It is also indicated that IEC would install or cause to be installed dual 12-inch meter runs, related equipment and approximately 50 feet of 12-inch pipe which would extend from IEC's 18-inch line to Texas Eastern's Line Nos. 19 and 12 at the site of the proposed taps.

It is also indicated that IEC has requested that Texas Eastern construct and install the facilities proposed herein so that IEC can receive natural gas from Texas Eastern so that IEC may ultimately deliver natural gas to Pennsylvania Power and Light Co.'s (PP&L) Martins Creek Steam Electric Station (Martins Creek) located in the Lower Mount Bethel Township, Northampton County, Pennsylvania. Texas Eastern mentions that IEC is a wholly-owned subsidiary of PP&L. It is also stated that PP&L intends to modify its oil-fired Martins Creek Units 3 and 4 to co-fire these units with natural gas. Texas Eastern states that IEC currently holds authority from the Pennsylvania Public Utility Commission (PaPUC) to operate a pipeline for the transportation of crude oil and petroleum products to PP&L at Martins Creek, and has received authorization from the PaPUC to convert 35 miles of its oil pipeline to dual natural gas and petroleum operations.

It has also been indicated that Martins Creek is not currently, nor has it ever been, served by UGI Utilities, Inc., (UGI), the local distribution company authorized by the PaPUC to serve customers in Lower Mount Bethel Township. Texas Eastern submits that the proposed delivery point does not constitute a bypass of UGI and requests that the Commission confirm that initiating this service will not trigger a contract reduction option for UGI.

On the same date, Texas Eastern also filed in Docket No. CP96–193–000 for authorization under its Subpart F blanket certificate to construct and operate the facilities to implement the proposed delivery point.

*Comment date:* March 14, 1996, in accordance with the first paragraph of Standard Paragraph F at the end of this notice.

Standard Paragraphs

F. Any person desiring to be heard or make any protest with reference to said filing should on or before the comment date file with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, a motion to intervene or a protest in accordance with the requirements of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214) and the Regulations under the Natural Gas Act (18 CFR 157.10). All protests filed with the Commission will be considered by it in determining the appropriate action to be taken but will not serve to make the protestants parties to the proceeding. Any person wishing to become a party to a proceeding or to participate as a party in any hearing therein must file a motion to intervene in accordance with the Commission's Rules.

Take further notice that, pursuant to the authority contained in and subject to jurisdiction conferred upon the Federal Energy Regulatory Commission by Sections 7 and 15 of the Natural Gas Act and the Commission's Rules of Practice and Procedure, a hearing will be held without further notice before the Commission or its designee on this filing if no motion to intervene is filed within the time required herein, if the Commission on its own review of the matter finds that a grant of the certificate is required by the public convenience and necessity. If a motion for leave to intervene is timely filed, or if the Commission on its own motion believes that a formal hearing is required, further notice of such hearing will be duly given.

Under the procedure herein provided for, unless otherwise advised, it will be unnecessary for the applicant to appear or be represented at the hearing.

G. Any person or the Commission's staff may, within 45 days after the issuance of the instant notice by the Commission, file pursuant to Rule 214 of the Commission's Procedural Rules (18 CFR 385.214) a motion to intervene or notice of intervention and pursuant to Section 157.205 of the Regulations under the Natural Gas Act (18 CFR 157.205) a protest to the request. If no protest is filed within the time allowed therefore, the proposed activity shall be deemed to be authorized effective the day after the time allowed for filing a protest. If a protest is filed and not withdrawn within 30 days after the time allowed for filing a protest, the instant request shall be treated as an application for authorization pursuant to Section 7 of the Natural Gas Act.

Lois D. Cashell,

*Secretary.*

[FR Doc. 96–4644 Filed 2–28–96; 8:45 am]

BILLING CODE 6717–01–P

**[Docket No. RM96–7–000]**

## Regulation of Negotiated Transportation Services of Natural Gas Pipelines; Order Granting Clarification

Issued February 23, 1996.

United Distribution Companies (UDC) and Associated Gas Distributors (AGD) request clarification of the scope of the comments solicited in the Commission's January 31, 1996 Policy Statement and Request for Comments (Policy Statement).[1] Among other things, the Policy Statement announced that the Commission is willing to accept, on a shipper-by-shipper basis, filings to charge negotiated rates if shippers retain the ability to choose a cost-of-service based tariff rate. In the Policy Statement, the Commission also established this separate proceeding and requested that interested parties file comments within 60 days on the appropriateness of negotiated terms and conditions of service.

UDC and AGD assert that the stated purpose of the proceeding established in Docket No. RM96–7–000 was to consider ''the ramifications of negotiated terms of service.'' [2] UDC and AGD contend that this language limits public comment to questions solely relating to negotiated terms and conditions of service, excluding any comments that may also raise rate issues. UDC and AGD also cite language in the Policy Statement that permits parties to comment on ''any other issue that should be considered before permitting pipelines to negotiate terms of service with individual shippers.'' [3] They assert that the concerns raised by the Commission with respect to the implementation of negotiated rates, and even aspects of the Statement of Policy on Market-Based Rates and changes to the Commission's Policy on Incentive Rates, ''could qualify as issues that should be considered before permitting pipelines to negotiate terms of service with individual shippers.'' [4] Thus, UDC and AGD request that the Commission clarify the scope of Docket No. RM96–7–000 such that public comments are solicited on rate issues as well as on issues concerning terms and conditions of service.

UDC and AGD state they recognize the January 31 Policy Statement as setting forth the Commission's final decision to permit negotiated rates and that the Commission is not soliciting further comment on its statutory

[1] 74 FERC ¶ 61,076 (1996), 61 FR 4633 (February 7, 1996).

[2] Policy Statement, slip op. at 61.

[3] Policy Statement, slip op. at 62.

[4] Request for Clarification at 3–4.

authority to permit individual pipelines to file proposals for negotiated rates. They acknowledge that any questions regarding the legality of the Commission's action in determining to permit pipelines to file proposals for negotiated rates, therefore, would be subject to the time deadlines applicable to appeal final Commission action.

The Commission recognizes that issues concerning negotiated terms and conditions of service may in fact be related to various rate issues. The Commission will not reconsider in Docket No. RM96–7–000 the policies it announced in Docket No. RM96–6–000 for market-based and incentive rates, or the permission it gave for market-based and incentive rates. However, the Commission will accept comments that discuss issues relevant to the Commission's consideration of whether to permit negotiated services, including relevant rate issues.

By the Commission.

Lois D. Cashell,

*Secretary.*

[FR Doc. 96–4607 Filed 2–28–96; 8:45 am]

**BILLING CODE 6717–01–M**

## ENVIRONMENTAL PROTECTION AGENCY

**[FRL–5431–9]**

## Public Meetings of the Storm Water Phase II Advisory Subcommittee and Urban Wet Weather Flows Advisory Committee

**AGENCY:** Environmental Protection Agency.

**ACTION:** Notice.

**SUMMARY:** Notice is hereby given that the Environmental Protection Agency (EPA) is convening two separate public meetings: (1) The Storm Water Phase II Advisory Subcommittee meeting on March 14–15, 1996 and (2) the Urban Wet Weather Flows (UWWF) Advisory Committee meeting on March 18–19, 1996. These meetings are open to the public without need for advance registration. The Storm Water Phase II Advisory Subcommittee will discuss issues concerning the draft approach developed by the Options Workgroup. The UWWF Advisory Committee will discuss issues related to water quality standards; the watershed approach; and storm water improvement.

**DATES:** The Storm Water Phase II meeting will be held on March 14–15, 1996. The March 14 meeting will begin promptly at 9 a.m. EST and end at approximately 5:30 p.m. On March 15, the meeting will begin at 8:30 a.m. and end at approximately 4 p.m. The UWWF Advisory Committee meeting will be held on March 18–19, 1996. On March 18, the meeting will begin at approximately 10 a.m. EST and run until approximately 6:30 p.m. On March 19, the meeting will run from approximately 8 a.m. until 3:30 p.m.

**ADDRESS:** Both meetings will be held at the Holiday Inn Georgetown, 2101 Wisconsin Avenue, NW., Washington, DC. The Holiday Inn Georgetown's telephone number is (202) 338–4600. A block of rooms are reserved from Wednesday, March 13 through Friday, March 15 (Phase II) and from Sunday, March 17 through Tuesday, March 19 (UWWF). The rooms are listed under ''EPA storm water and urban wet weather meeting.''

**FOR FURTHER INFORMATION:** For the Phase II Subcommittee meeting, contact George Utting, Acting Storm Water Phase II Matrix Manager, Office of Wastewater Management, at (202) 260–9530.

For the UWWF Advisory Committee meeting, contact William Hall, Urban Wet Weather Matrix Manager, Office of Wastewater Management, at (202) 260–1458, or Internet: hall.william@epamail.epa.gov.

Dated: February 22, 1996.

Alfred W. Lindsey,

*Deputy Director, Office of Wastewater Management, Designated Federal Official.*

[FR Doc. 96–4696 Filed 2–28–96; 8:45 am]

**BILLING CODE 6560–50–P**

**[FRL–5431–8]**

## Reformulated and Conventional Gasoline Reports

**AGENCY:** Environmental Protection Agency (EPA).

**ACTION:** Extension of deadline for submission of reports.

**SUMMARY:** EPA is announcing that it will allow refiners, importers and oxygenate blenders until March 31, 1996 to submit certain reformulated and conventional gasoline reports required for calendar year 1995. These reports under 40 CFR 80.75 and 80.105 would otherwise be due on or before February 29, 1996. Because of unforeseen circumstances beyond its control, EPA has been delayed in developing and distributing the materials and guidance necessary for preparing certain reports for the 1995 reporting year. EPA will allow the submission by March 31, 1996 in order to give parties adequate time to prepare and submit complete and accurate reports.

**FOR FURTHER INFORMATION CONTACT:** Mr. Peter Lidiak, U.S. EPA, Office of Air & Radiation, 401 M Street, S.W., (6406–J), Washington DC 20460. Telephone: 202–233–9026.

**SUPPLEMENTARY INFORMATION:**

I. Background

On December 15, 1993, EPA promulgated regulations implementing the reformulated and conventional gasoline program required by section 211(k) of the Clean Air Act. This program establishes standards for the quality of gasoline produced or imported beginning in 1995, and includes requirements that refiners, importers and oxygenate blenders (gasoline producers) must submit periodic reports to EPA in order to demonstrate compliance with these standards.

Under 40 CFR 80.75, producers of reformulated gasoline are required to submit certain reports quarterly while other reports must be submitted on an annual basis. The reformulated gasoline reports that must be submitted on an annual basis [1] include the following:

Reid vapor pressure (RVP) averaging report, § 80.75(b)(1);[2] sulfur, T–90 and olefin averaging report, § 80.75(b)(2); VOC emissions performance averaging report, § 80.75(c);[3] benzene averaging report, § 80.75(d); toxics emissions performance averaging report, § 80.75(e); oxygen averaging report, § 80.75(f); $NO_x$ emissions performance averaging report, § 80.75(g); credit transfer report, § 80.75(h); covered area report, § 80.75(I); and per-gallon compliance report, § 80.75(l).

Under 40 CFR 80.105, all producers of non-reformulated, or conventional, gasoline are required to submit annual reports. Both §§ 80.75 and § 80.105 require that reports must be submitted on forms, and following procedures, specified by the EPA Administrator.

[1] The averaging reports for RVP, oxygen and benzene, and toxics, VOC and NOx emissions performance are required only for producers who elected to meet these standards on average, as opposed to a per-gallon basis. The credit transfer report is required only for a producers who were the transferor or transferee of oxygen or benzene credits. The covered area report is required only for producers who met one or more standard on average. The per-gallon compliance report is required only for producers who met one or more standard on a per-gallon basis.

[2] The RVP annual averaging report must be submitted with the third quarter report, which is due on or before November 30 each year. As a result, the forms and instructions for this report were prepared by EPA prior to November 30, 1995, and the RVP annual averaging report is unaffected by this Notice.

[3] The VOC emissions performance annual average report, which must be filed with the third quarter report due on or before November 30, is not affected by this Notice.

EPA previously has provided forms and procedures regarding the quarterly reporting on reformulated gasoline and on the annual reports submitted with the third quarterly report, and producers have submitted these reports during 1995. Nevertheless, the report for the fourth quarter of 1995, which is due to be filed on or before February 29, 1996, also may be filed by March 31, 1996, along with the annual averaging reports for 1995. EPA had anticipated processing the annual averaging reports for 1995 along with the fourth quarter 1995 reports, and believes confusion may be avoided if all these reports have the same filing deadline.

The annual reports for both reformulated and conventional gasoline which are due to be filed on or before February 29, 1996, and the reports for the fourth quarter of 1995 due on this same date, are the subject of this Notice.

II. Additional Time to Submit Annual Reports for 1995

Since October 1, 1995, EPA has been operating under a series of continuing funding resolutions. On two separate occasions these continuing resolutions have lapsed, resulting in shutdowns of operations at EPA. These shutdowns have totaled 17 working days. Further, in January, 1996, EPA's Washington, D.C. area offices were closed for four days due too severe inclement weather conditions. During the shutdowns EPA was not able to work on developing the forms and procedures for submitting reformulated and conventional gasoline annual reports. EPA also was unable to work on these tasks during the four days of closure due to the inclement weather because this work is performed in EPA Headquarters in Washington, D.C.

These shutdowns have resulted in delays in finalizing and distributing the reporting forms and instructions beyond EPA's intended distribution date, and, in consequence, gasoline producers may not have sufficient time to prepare and submit their reports by February 29, 1996. This is particularly true because regulated parties have not previously prepared or submitted these kinds of annual reports. In addition, EPA believes that the delay in the distribution of the reporting package may create concern in the regulated community regarding potential enforcement actions, including civil penalties, for those gasoline producers submitting reports that may contain errors as a result of the late distribution of the EPA reporting package or reporting after the February 29, 1996, deadline.

In recognition of the importance to industry and the public that gasoline producers submit complete and accurate reformulated and conventional gasoline annual reports, and the value to EPA of obtaining this information in a consistent format, EPA is allowing all refiners, importers and oxygenate blenders an additional month, until March 31, 1996, to submit their 1995 reformulated and conventional gasoline annual reports. However, annual reports for 1995 that are filed after March 31, 1996, will be subject to EPA enforcement action, where appropriate. In addition, the regulated parties will be allowed to submit the reports for the fourth quarter of 1995, otherwise due on February 29, 1996, no later than March 31, 1996.

This allowance of additional time for reporting applies only to the reformulated and conventional gasoline reports otherwise due on February 29, 1996, covering calendar year 1995. Nothing in this notice shall be construed to apply to any other reformulated or conventional gasoline reporting obligations, or to any reformulated or conventional gasoline reports due for future reporting years.

For the reasons stated above, EPA is issuing this notice without prior notice and an opportunity to comment. In addition, if this action were to be construed as rulemaking subject to either section 307 of the Clean Air Act or section 553 of the Administrative Procedures Act, for the reasons stated above, EPA has determined that notice and an opportunity for public comment are impracticable and unnecessary. Providing for public comment might further delay reporting, and, because there is no substantive change in the reporting obligation, other than allowing an additional month, the public will continue to receive the same information, though slightly delayed. Also, public comment would not further inform EPA's decision because the events giving rise to the need to provide extra time for reporting have already occurred. In addition, additional notice and comment procedures in this situation would be contrary to the public interest in timely and accurate reporting of data under section 211(k) of the Clean Air Act and 40 CFR 80.75 and 80.105.

Dated: February 23, 1996.

Mary D. Nichols,

*Assistant Administrator for Air and Radiation.*

[FR Doc. 96–4695 Filed 2–28–96; 8:45 am]

**BILLING CODE 6560–50–P**

## FEDERAL RESERVE SYSTEM

### Compass Bancshares, Inc., et al.; Formations of; Acquisitions by; and Mergers of Bank Holding Companies

The companies listed in this notice have applied for the Board's approval under section 3 of the Bank Holding Company Act (12 U.S.C. 1842) and § 225.14 of the Board's Regulation Y (12 CFR 225.14) to become a bank holding company or to acquire a bank or bank holding company. The factors that are considered in acting on the applications are set forth in section 3(c) of the Act (12 U.S.C. 1842(c)).

Each application is available for immediate inspection at the Federal Reserve Bank indicated. Once the application has been accepted for processing, it will also be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing to the Reserve Bank or to the offices of the Board of Governors. Any comment on an application that requests a hearing must include a statement of why a written presentation would not suffice in lieu of a hearing, identifying specifically any questions of fact that are in dispute and summarizing the evidence that would be presented at a hearing.

Unless otherwise noted, comments regarding each of these applications must be received not later than March 25, 1996.

A. Federal Reserve Bank of Atlanta (Zane R. Kelley, Vice President) 104 Marietta Street, N.W., Atlanta, Georgia 30303:

*1. Compass Bancshares, Inc.*, Birmingham, Alabama; Compass Banks of Texas, Inc., Birmingham, Alabama; and Compass Bancorporation of Texas, Inc., Wilmington, Delaware; to merge with Peoples Bancshares, Inc., Belton, Texas, and thereby indirectly acquire The Peoples National Bank, Belton, Texas.

B. Federal Reserve Bank of San Francisco (Kenneth R. Binning, Director, Bank Holding Company) 101 Market Street, San Francisco, California 94105:

*1. Bank of Taiwan*, Taipei, Taiwan; to acquire, indirectly through First Commercial Bank, Taipei, Taiwan, at least 12.84 percent of the voting shares of FCB Taiwan California Bank, Alhambra, California (in organization).

Board of Governors of the Federal Reserve System, February 23, 1996.

Jennifer J. Johnson,

*Deputy Secretary of the Board.*

[FR Doc. 96–4588 Filed 2–28–96; 8:45 am]

**BILLING CODE 6210–01–F**

## First Union Corporation, et al.; Acquisitions of Companies Engaged in Permissible Nonbanking Activities

The organizations listed in this notice have applied under § 225.23(a)(2) or (f) of the Board's Regulation Y (12 CFR 225.23(a)(2) or (f)) for the Board's approval under section 4(c)(8) of the Bank Holding Company Act (12 U.S.C. 1843(c)(8)) and § 225.21(a) of Regulation Y (12 CFR 225.21(a)) to acquire or control voting securities or assets of a company engaged in a nonbanking activity that is listed in § 225.25 of Regulation Y as closely related to banking and permissible for bank holding companies. Unless otherwise noted, such activities will be conducted throughout the United States.

Each application is available for immediate inspection at the Federal Reserve Bank indicated. Once the application has been accepted for processing, it will also be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing on the question whether consummation of the proposal can ''reasonably be expected to produce benefits to the public, such as greater convenience, increased competition, or gains in efficiency, that outweigh possible adverse effects, such as undue concentration of resources, decreased or unfair competition, conflicts of interests, or unsound banking practices.'' Any request for a hearing on this question must be accompanied by a statement of the reasons a written presentation would not suffice in lieu of a hearing, identifying specifically any questions of fact that are in dispute, summarizing the evidence that would be presented at a hearing, and indicating how the party commenting would be aggrieved by approval of the proposal.

Unless otherwise noted, comments regarding each of these applications must be received at the Reserve Bank indicated for the application or the offices of the Board of Governors not later than March 15, 1996.

A. Federal Reserve Bank of Richmond (Lloyd W. Bostian, Jr., Senior Vice President) 701 East Byrd Street, Richmond, Virginia 23261:

*1. First Union Corporation*, Charlotte, North Carolina; to acquire the 12 percent equity interest in Florida Infomanagement Services, Orlando,Florida, and thereby engage in data processing and transmission services, pursuant to § 225.25(b)(7) of the Board's Regulation Y, and in management consulting services, pursuant to § 225.25(b)(11) of the Board's Regulation Y.

B. Federal Reserve Bank of Atlanta (Zane R. Kelley, Vice President) 104 Marietta Street, N.W., Atlanta, Georgia 30303:

*1. Pilot Bancshares, Inc.*, Tampa, Florida; to acquire National Aircraft Finance Company, Lakeland, Florida, and thereby engage in aircraft financing activities, pursuant to § 225.25(b)(1) of the Board's Regulation Y. These activities will be conducted throughout the state of Florida.

Board of Governors of the Federal Reserve System, February 23, 1996.

Jennifer J. Johnson,

*Deputy Secretary of the Board*.

[FR Doc. 96–4589 Filed 2–28–96; 8:45 am]

BILLING CODE 6210–01–F

## Marty W. Hansen, et al.; Change in Bank Control Notices; Acquisitions of Shares of Banks or Bank Holding Companies

The notificants listed below have applied under the Change in Bank Control Act (12 U.S.C. 1817(j)) and § 225.41 of the Board's Regulation Y (12 CFR 225.41) to acquire a bank or bank holding company. The factors that are considered in acting on the notices are set forth in paragraph 7 of the Act (12 U.S.C. 1817(j)(7)).

The notices are available for immediate inspection at the Federal Reserve Bank indicated. Once the notices have been accepted for processing, they will also be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing to the Reserve Bank indicated for that notice or to the offices of the Board of Governors. Comments must be received not later than March 15, 1996.

A. Federal Reserve Bank of Kansas City (John E. Yorke, Senior Vice President) 925 Grand Avenue, Kansas City, Missouri 64198:

*1. Marty W. Hansen and Patricia K. Hansen*, both of Pawnee, Oklahoma; to acquire an additional 7.6 percent, for a total of 25.2 percent, and James W. Martin, Pawnee, Oklahoma, acting in concert, to acquire a total of 25.1 percent, for a total of 50.3 percent, of the voting shares of Pawnee Holding Company, Inc., Pawnee, Oklahoma, and thereby indirectly acquire Pawnee National Bank, Pawnee, Oklahoma.

Board of Governors of the Federal Reserve System, February 23, 1996.

Jennifer J. Johnson,

*Deputy Secretary of the Board*.

[FR Doc. 96–4590 Filed 2–28–96; 8:45 am]

BILLING CODE 6210–01–F

## Wachovia Corporation, et al.; Notice of Applications to Engage de novo in Permissible Nonbanking Activities

The companies listed in this notice have filed an application under § 225.23(a)(1) of the Board's Regulation Y (12 CFR 225.23(a)(1)) for the Board's approval under section 4(c)(8) of the Bank Holding Company Act (12 U.S.C. 1843(c)(8)) and § 225.21(a) of Regulation Y (12 CFR 225.21(a)) to commence or to engage *de novo*, either directly or through a subsidiary, in a nonbanking activity that is listed in § 225.25 of Regulation Y as closely related to banking and permissible for bank holding companies. Unless otherwise noted, such activities will be conducted throughout the United States.

Each application is available for immediate inspection at the Federal Reserve Bank indicated. Once the application has been accepted for processing, it will also be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing on the question whether consummation of the proposal can ''reasonably be expected to produce benefits to the public, such as greater convenience, increased competition, or gains in efficiency, that outweigh possible adverse effects, such as undue concentration of resources, decreased or unfair competition, conflicts of interests, or unsound banking practices.'' Any request for a hearing on this question must be accompanied by a statement of the reasons a written presentation would not suffice in lieu of a hearing, identifying specifically any questions of fact that are in dispute, summarizing the evidence that would be presented at a hearing, and indicating how the party commenting would be aggrieved by approval of the proposal.

Unless otherwise noted, comments regarding the applications must be received at the Reserve Bank indicated or the offices of the Board of Governors not later than March 15, 1996.

A. Federal Reserve Bank of Richmond (Lloyd W. Bostian, Jr., Senior Vice President) 701 East Byrd Street, Richmond, Virginia 23261:

*1. Wachovia Corporation*, Winston-Salem, North Carolina, and Wachovia Capital Markets, Inc., Atlanta, Georgia; to engage *de novo* through its subsidiary, Wachovia Capital Partners, Inc., Atlanta, Georgia, in providing tax planning and preparation services, pursuant to § 225.25(b)(21) of the Board's Regulation Y.

B. Federal Reserve Bank of Kansas City (John E. Yorke, Senior Vice

President) 925 Grand Avenue, Kansas City, Missouri 64198:

*1. Greater Metro Bank Holding Company*, Aurora, Colorado; to engage *de novo* through its subsidiary, Greater Metro Insurance and Consulting Services, Inc., Aurora, Colorado, in the activity of providing management consulting services to depository institutions, pursuant to § 225.25(b)(11) of the Board's Regulation Y.

*2. Labette County Bankshares, Inc.*, Altamont, Kansas; to engage *de novo* through its subsidiary, Kansas Credit, Inc., Altamont, Kansas, in establishing a consumer finance company, pursuant to § 225.25(b)(1) of the Board's Regulation Y.

C. Federal Reserve Bank of Dallas (Genie D. Short, Vice President) 2200 North Pearl Street, Dallas, Texas 75201-2272:

*1. South Plains Financial, Inc.*, Lubbock, Texas, and South Plains Delaware Financial Corporation, Dover, Delaware; to engage *de novo* through their subsidiary, South Plains Financial Services, Inc., Lubbock, Texas, in providing to others, data processing and data transmission services, facilities (including data processing and data transmission hardware, software, documentation or operating personnel), data bases, or access to such services, facilities, or data bases by any technological means pursuant to written agreements describing and limiting the services to the processing or furnishing of financial, banking, or economic data within the scope allowed by applicable statutes and regulations, including, processing and transmitting banking, financial, and economic related data for others through; timesharing; electronic funds transfer; home banking; authentication; provision of packaged financial systems to depository or other institutions to perform traditional banking functions such as data capture and sorting, balancing and statement printing; and back office services such as statement rendering, proof operations, research, filming, NSF's, data input and return items; selling excess capacity on data processing and transmission facilities; providing by-products of permissible data processing and data transmission services for the internal operations of South Plains Financial, Inc., and its subsidiaries, pursuant to § 225.25(b)(7) of the Board's Regulation Y, and in performing appraisals of real estate and tangible and intangible personal property, including securities, pursuant to § 225.25(b)(13) of the Board's Regulation Y. The activities will be conducted thoughout the state of Texas.

Board of Governors of the Federal Reserve System, February 23, 1996.

Jennifer J. Johnson,

*Deputy Secretary of the Board.*

[FR Doc. 96–4591 Filed 2–28–96; 8:45 am]

BILLING CODE 6210–01–F

## FEDERAL TRADE COMMISSION

**[File No. 932–3011]**

## Amoco Oil Company; Consent Agreement With Analysis to Aid Public Comment

**AGENCY:** Federal Trade Commission.

**ACTION:** Consent Agreement.

**SUMMARY:** In settlement of alleged violations of federal law prohibiting unfair acts and practices and unfair methods of competition, this consent agreement, accepted subject to final Commission approval, would bar the Chicago-based corporation from making any performance or environmental benefit claim for any of its gasoline without first having scientific evidence to back it up. The consent agreement settles allegations stemming from Amoco's ''Crystal Clear Amoco Ultimate'' advertising campaign.

**DATES:** Comments must be received on or before April 29, 1996.

**ADDRESSES:** Comments should be directed to: FTC/Office of the Secretary, Room 159, 6th St. and Pa. Ave., N.W., Washington, D.C. 20580.

**FOR FURTHER INFORMATION CONTACT:** Joel Winston, Federal Trade Commission, S–4002, 6th and Pennsylvania Avenue, NW, Washington, DC 20580. (202) 326–3153. Michael Dershowitz, Federal Trade Commission, S–4002, 6th and Pennsylvania Avenue, NW, Washington, DC 20580. (202) 326–3158.

**SUPPLEMENTARY INFORMATION:** Pursuant to Section 6(f) of the Federal Trade Commission Act, 38 Stat. 721, 15 U.S.C. 46 and Section 2.34 of the Commission's Rules of Practice (16 CFR 2.34), notice is hereby given that the following consent agreement containing a consent order to cease and desist, having been filed with and accepted, subject to final approval, by the Commission, has been placed on the public record for a period of sixty (60) days. Public comment is invited. Such comments or views will be considered by the Commission and will be available for inspection and copying at its principal office in accordance with Section 4.9(b)(6)(ii) of the Commission's Rules of Practice (16 CFR 4.9(b)(6)(ii)).

In the Matter of Amoco Oil Company, a corporation; File No. 932–3011.

Agreement Containing Consent Order to Cease and Desist

The Federal Trade Commission having initiated an investigation of certain acts and practices of Amoco Oil Company, a corporation, hereinafter sometimes referred to as proposed respondent, and it now appearing that proposed respondent is willing to enter into an agreement containing an order to cease and desist from the use of the acts and practices being investigated,

It is hereby agreed by and between Amoco Oil Company, by its duly authorized officer, and its attorney, and counsel for the Federal Trade Commission that:

1. Proposed respondent Amoco Oil Company is a Maryland corporation, with its offices and principal place of business located at 200 East Randolph Drive, Chicago, Illinois 60601.

2. Proposed respondent admits all the jurisdictional facts set forth in the draft complaint here attached.

3. Proposed respondent waives:

(a) Any further procedural steps;

(b) The requirement that the Commission's decision contain a statement of findings of fact and conclusions of law; and

(c) All rights to seek judicial review or otherwise to challenge or contest the validity of the order entered pursuant to this agreement.

4. This agreement shall not become part of the public record in the proceeding unless and until it is accepted by the Commission. If this agreement is accepted by the Commission it, together with the draft of the complaint contemplated thereby, will be placed on the public record for a period of sixty (60) days and information in respect thereto publicly released. The Commission thereafter may either withdraw its acceptance of this agreement and so notify the proposed respondent, in which event it will take such action as it may consider appropriate, or issue and serve its complaint (in such form as the circumstances may require) and decision, in disposition of the proceeding.

5. This agreement is for settlement purposes only and does not constitute an admission by proposed respondent that the law has been violated as alleged in the draft of complaint here attached, or that the facts as alleged in the draft complaint, other than jurisdictional facts, are true.

6. This agreement contemplates that, if it is accepted by the Commission, and if such acceptance is not subsequently withdrawn by the Commission pursuant to the provisions of § 2.34 of the

Commission's Rules, the Commission may, without further notice to the proposed respondent, (1) issue its complaint corresponding in form and substance with the draft of complaint here attached and its decision containing the following order to cease and desist in disposition of the proceeding and (2) make information public in respect thereto. When so entered, the order to cease and desist shall have the same force and effect and may be altered, modified or set aside in the same manner and within the same time provided by statute for other orders. The order shall become final upon service. Delivery by the U.S. Postal Service of the complaint and decision containing the agreed-to order to proposed respondent's address as stated in this agreement shall constitute service. Proposed respondent waives any right it may have to any other manner of service. The complaint may be used in construing the terms of the order, and no agreement, understanding, representation or interpretation not contained in the order or the agreement may be used to vary or contradict the terms of the order.

7. Proposed respondent has read the proposed complaint and order contemplated hereby. It understands that once the order has been issued, it will be required to file one or more compliance reports showing that it has fully complied with the order. Proposed respondent further understands that it may be liable for civil penalties in the amount provided by law for each violation of the order after it becomes final.

Order

*I.*

It is ordered that respondent Amoco Oil Company, a corporation, its successors and assigns, and its officers, representatives, agents and employees, directly or through any corporation, subsidiary, division or other device, in connection with the advertising, labeling, offering for sale, sale or distribution of Amoco Silver 89 octane gasoline, Amoco Ultimate 92 or 93 octane gasoline, or any other gasoline in or affecting commerce, as ''commerce'' is defined in the Federal Trade Commission Act, do forthwith cease and desisit from making any representation in any manner, directly or by implication, that:

(A) Amoco Ultimate gasoline is superior to all other brands of premium gasoline with respect to engine performance or environmental benefits because it is refined more than all other such brands;

(B) The clear color of Amoco Ultimate gasoline demonstrates the superior engine performance or environmental benefits Amoco Ultimate provides compared to other brands of gasolines that are not clear in color;

(C) A single tankful of Amoco Silver or Ultimate gasoline will make dirty or clogged fuel injectors clean;

(D) Amoco Silver or Ultimate gasoline provides superior fuel injector cleaning compared to other brands of gasoline;

(E) Automobiles driven more than 15,000 miles with regular gasoline generally suffer from lost engine power or acceleration which will be restored by the higher octane of Amoco Silver gasoline; or

(F) Concerns the relative or absolute attributes of any gasoline with respect to environmental benefits or with respect to engine performance, power, acceleration, or engine cleaning ability, unless, at the time of making such representation, respondent possesses and relies upon competent and reliable scientific evidence that substantiates the representation. For purposes of this Order, ''competent and reliable scientific evidence'' shall mean tests, analyses, research, studies, or other evidence based upon the expertise of professionals in the relevant area, that has been conducted and evaluated in an objective manner by persons qualified to do so, using procedures generally accepted in the profession to yield accurate and reliable results.

For purposes of this Part, any representation, directly or by implication, that any gasoline will clean or clean up fuel injectors to a level that engine performance is not adversely affected will be deemed to be substantiated if respondent possesses and relies upon competent and reliable testing demonstrating that the flow rate of each fuel injector was returned to at least 95 percent of its original value.

*Provided* that, nothing in this Order shall prohibit respondent from truthfully representing the numerical octane rating of any gasoline.

*II.*

It is further ordered that respondent Amoco Oil Company, shall within thirty (30) days after service distribute a copy of this Order to all operating divisions, subsidiaries, officers, managerial employees, and all of its employees or agents engaged in the preparation and placement of advertisements or promotional sales materials covered by this Order and shall obtain from each such employee a signed statement acknowledging receipt of the order.

*III.*

It is further ordered that for three (3) years after the last date of dissemination of any representation covered by this Order, respondent Amoco Oil Company or its successors or assigns, shall maintain and upon request make available to the Federal Trade Commission or its staff for inspection and copying:

A. All materials that were relied upon to substantiate any representation covered by this Order; and

B. All tests, reports, studies or surveys, in respondent's possession or control that contradict any representation covered by this Order.

*IV.*

It is further ordered that respondent Amoco Oil Company shall notify the Commission at least thirty (30) days prior to the effective date of any proposed change in the corporation that may affect compliance obligations under this Order such as a dissolution, assignment or sale resulting in the emergence of a successor corporation(s), the creation or dissolution of subsidiaries or any other change in the corporation.

*V.*

It is further ordered that this Order will terminate twenty years from the date of its issuance, or twenty years from the most recent date that the United States or the Federal Trade Commission files a complaint (with or without an accompanying consent decree) in federal court alleging any violation of the order, whichever comes later; provided, however, that the filing of such a complaint will not affect the duration of:

A. Any paragraph in this Order that terminates in less than twenty years;

B. This Order's application to any respondent that is not named as a defendant in such complaint; and

C. This Order if such complaint is filed after the Order has terminated pursuant to this paragraph.

Provided further, that if such complaint is dismissed or a federal court rules that the respondent did not violate any provision of the Order, and the dismissal or ruling is either not appealed or upheld on appeal, then the Order will terminate according to this paragraph as though the complaint was never filed, except that the Order will not terminate between the date such complaint is filed and the later of the deadline for appealing such dismissal or ruling and the date such dismissal or ruling is upheld on appeal.

*VI.*

It is further ordered that respondent Amoco Oil Company shall, within sixty (60) days after service of this Order upon it, and at such other times as the Commission may require, file with the Commission a report, in writing, setting forth in detail the manner and form in which it has complied with this Order.

Analysis of Proposed Consent Order to Aid Public Comment

The Federal Trade Commission has accepted, subject to final approval, an agreement containing a consent order from Amoco Oil Company (''Amoco'').

The proposed consent order has been placed on the public record for sixty (60) days for reception of comments by interested persons. Comments received during this period will become part of the public record. After sixty (60) days, the Commission will again review the agreement and the comments received and will decide whether it should withdraw from the agreement or make final the agreement's proposed order.

This matter concerns advertising claims regarding the performance attributes of Amoco Silver midgrade and Amoco Ultimate premium gasolines. The Commission's proposed complaint alleges that Amoco's advertising has made unsubstantiated claims that Amoco Ultimate provides superior performance and environmental benefits compared to all other premium brands, because it is refined more than such brands, and that Ultimate's clear color demonstrates its superiority. The complaint also challenges as unsubstantiated the claim that automobiles driven more than 15,000 miles generally suffer from lost engine power and acceleration, which Amoco Silver's higher octane will restore. Finally, the complaint challenges as unsubstantiated the claims that Silver and Ultimate will clean dirty fuel injectors in one tankful, and are superior to other brands in cleaning fuel injectors.

The proposed consent order contains provisions designed to prevent respondent from engaging in similar acts and practices in the future.

Part I of the proposed order prohibits respondent from making any of the unsubstantiated representations alleged in the complaint, or any other representation concerning the attributes of any Amoco gasoline with respect to environmental benefits or engine performance, power, acceleration or engine cleaning ability, unless it has competent and reliable scientific evidence that substantiates the representation, at the time it is made.

Part I of the proposed order also states that any claim by respondent that a gasoline will clean or clean up fuel injectors to a level that engine performance is not adversely affected will be deemed to be substantiated by competent and reliable testing showing that the flow rate of each injector was restored to at least 95% of its original value. Part I of the proposed order also allows truthful representations regarding the numerical octane rating of any gasoline.

Part II of the order requires Amoco to distribute copies of the order to its operating divisions and to various officers, agents and employees of Amoco.

Part III of the order requires Amoco to maintain copies of all materials relied upon in making any representation covered by the order.

Part IV of the order requires Amoco to notify the Commission of any changes in corporate structure that might affect compliance with the order.

Part V of the order is a ''sunset'' provision, dictating that the order will terminate twenty years from the date it is issued or twenty years after a complaint is filed in federal court, by either the United States or the FTC, alleging any violation of the order.

Part VI of the order requires Amoco to file with the Commission one or more reports detailing compliance with the order.

The purpose of this analysis is to facilitate public comment on the proposed order. It is not intended to constitute an official interpretation of the agreement and proposed order or to modify in any way their terms.

Donald S. Clark,

*Secretary.*

[FR Doc. 96–4692 Filed 2–28–96; 8:45 am]

BILLING CODE 6750–01–M

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**[File No. 942–3202]**

## Nordic Track, Inc.; Consent Agreement With Analysis to Aid Public Comment

**AGENCY:** Federal Trade Commission.

**ACTION:** Consent Agreement.

**SUMMARY:** In settlement of alleged violations of federal law prohibiting unfair acts and practices and unfair methods of competition, this consent agreement, accepted subject to final Commission approval, would bar the Chaska, Minnesota-based corporation from misrepresenting weight-loss study results and would require it to have competent and reliable evidence to back up weight loss, weight maintenance, and related claims for any exercise equipment it sells. The Commission had alleged that Nordic Track made false and unsubstantiated weight loss and weight maintenance claims in advertising its cross-country ski exercise machine.

**DATES:** Comemnts must be received on or before April 29, 1996.

**ADDRESSES:** Comments should be directed to: FTC/Office of the Secretary, Room 159, 6th St. and Pa Ave., NW., Washington, DC 20580.

**FOR FURTHER INFORMATION CONTACT:** Jeffrey Klurfeld or Kerry O'Brien, Federal Trade Commission, San Francisco Regional Office, 901 Market Street, Suite 570, San Francisco, CA 94103. (415) 356–5270.

**SUPPLEMENTARY INFORMATION:** Pursuant to Section 6(f) of the Federal Trade Commission Act, 38 Stat. 721, 15 U.S.C. 46 and Section 2.34 of the Commission's Rules of Practice (16 CFR 2.34), notice is hereby given that the following consent agreement containing a consent order to cease and desist, having been filed with and accepted, subject to final approval, by the Commission, has been placed on the public record for a period of sixty (60) days. Public comment is invited. Such comments or views will be considered by the Commission and will be available for inspection and copying at its principal office in accordance with Section 4.9(b)(6) (ii) of the Commission's Rules of Practice (16 CFR 4.9(b)(6)(ii)).

In the matter of NordicTrack, Inc., a corporation. File No: 942–3202.

Agreement Containing Consent Order to Cease and Desist

The Federal Trade Commission having initiated an investigation of certain acts and practices of NordicTrack, Inc., a corporation, and it now appearing that NordicTrack, Inc., a corporation, hereinafter sometimes referred to as proposed respondent, is willing to enter into an agreement containing an order to cease and desist from the use of the acts and practices being investigated,

It is hereby agreed by and between NordicTrack, Inc., by its duly authorized officer, and its attorney, and counsel for the Federal Trade Commission that:

1. Proposed respondent NordicTrack, Inc. is a corporation organized, existing, and doing business under and by virtue of the laws of the State of Minnesota, with its office and principal place of business located at 104 Peavey Road, in the City of Chaska, State of Minnesota.

2. Proposed respondent admits all the jurisdictional facts set forth in the draft of complaint here attached.

3. Proposed respondent waives:

a. Any further procedural steps;

b. The requirement that the Commission's decision contain a statement of findings of fact and conclusions of law; and

c. All rights to seek judicial review or otherwise to challenge or contest the validity of the order entered pursuant to this agreement.

4. This agreement shall not become part of the public record of the proceeding unless and until it is accepted by the Commission. If this agreement is accepted by the Commission, it, together with the draft of complaint contemplated thereby, will be placed on the public record for a period of sixty (60) days and information in respect thereto publicly released. The Commission thereafter may either withdraw its acceptance of this agreement and so notify the proposed respondent, in which event it will take such action as it may consider appropriate, or issue and serve its complaint (in such form as the circumstances may require) and decision, in disposition of the proceeding.

5. This agreement is for settlement purposes only and does not constitute an admission by proposed respondent of facts, other than jurisdictional facts, or of violations of law as alleged in the draft complaint here attached.

6. This agreement contemplates that, if it is accepted by the Commission, and if such acceptance is not subsequently withdrawn by the Commission pursuant to the provisions of Section 2.34 of the Commission's Rules, the Commission may, without further notice to proposed respondent, (a) issue its complaint corresponding in form and substance with the draft of complaint here attached and its decision containing the following order to cease and desist in disposition of the proceeding and (b) make information public in respect thereto. When so entered, the order to cease and desist shall have the same force and effect and may be altered, modified or set aside in the same manner and within the same time provided by statute for other orders. The order shall become final upon service. Delivery by the U.S. Postal Service of the complaint and decision containing the agreed-to order to proposed respondent's address as stated in this agreement shall constitute service. Proposed respondent waives any right it may have to any other manner of service. The complaint may be used in construing the terms of the order, and no agreement, understanding, representation, or interpretation not contained in the order or the agreement may be used to vary or contradict the terms of the order.

7. Proposed respondent has read the proposed complaint and order contemplated hereby. It understands that once the order has been issued, it will be required to file one or more compliance reports showing that it has fully complied with the order. Proposed respondent further understands that it may be liable for civil penalties in the amount provided by law for each violation of the order after it becomes final.

ORDER

*I.*

It is ordered that respondent NordicTrack, Inc., a corporation, its successors and assigns, and its officers, agents, representatives, and employees, directly or through any corporation, subsidiary, division, or other device, in connection with the manufacturing, labelling, advertising, promotion, offering for sale, sale, or distribution of any exercise equipment in or affecting commerce, as ''commerce'' is defined in the Federal Trade Commission Act, do forthwith cease and desist from representing, in any manner, directly or by implication:

A. The percentage of its customers who have successfully lost weight;

B. The percentage of its customers who have successfully maintained weight loss;

C. The number of pounds lost by its customers;

D. The percentage of weight loss maintained by its customers;

E. The rate or speed at which its customers have experienced weight loss;

F. The length of time its customers must use such product to achieve weight loss;

G. The comparative efficacy of any other weight loss method or methods; or

H. The benefits, efficacy, or performance of such product in promoting weight loss or weight loss maintenance;

unless, at the time of making such representation, respondent possesses and relies upon competent and reliable evidence, which when appropriate must be competent and reliable scientific evidence, that substantiates the representation. For the purposes of this Order, ''competent and reliable scientific evidence'' shall mean tests, analyses, research, studies or other evidence based on the expertise of professionals in the relevant area, that have been conducted and evaluated in an objective manner by persons qualified to do so, using procedures generally accepted in the profession to yield accurate and reliable results.

*II.*

It is further ordered that respondent NordicTrack, Inc., a corporation, its successors and assigns, and its officers, agents, representatives, and employees, directly or through any corporation, subsidiary, division, or other device, in connection with the manufacturing, labelling, advertising, promotion, offering for sale, sale, or distribution of any exercise equipment in or affecting commerce, as ''commerce'' is defined in the Federal Trade Commission Act, do forthwith cease and desist from misrepresenting, in any manner, directly or by implications, the existence, contents, validity, results, conclusions, or interpretations of any test, study, or survey relating to weight loss, weight loss maintenance or comparisons with the efficacy of other weight loss methods.

*III.*

It is further ordered that for three (3) years after the last date of dissemination of any representation covered by this Order, respondent, or its successors and assigns, shall maintain and upon request make available to the Federal Trade Commission for inspection and copying:

A. All materials that were relied upon in disseminating such representation; and

B. All tests, reports, studies, surveys, demonstrations, or other evidence in its possession or control that contradict, qualify, or call into question such representation, or the basis relied upon for such representation, including complaints from consumers.

*IV.*

It is further ordered that respondent shall notify the Commission at least thirty (30) days prior to any proposed change in the respondent such as dissolution, assignment or sale resulting in the emergence of a successor corporation, the creation or dissolution of subsidiaries, or any other change in the corporation which may affect compliance obligations arising out of this Order.

*V.*

It is further ordered that respondent shall, within ten (10) days from the date of service of this Order upon it, distribute a copy of this Order to each of its officers, agents, representatives, independent contractors, and employees involved in the preparation and placement of advertisements or promotional materials, or who is in

communication with customers or prospective customers, or who has any responsibilities with respect to the subject matter of this Order; and for a period of five (5) years, from the date of issuance of this Order, distribute a copy of this Order to all of respondent's future such officers, agents, representatives, independent contractors, and employees.

*VI.*

It is further ordered that this Order will terminate twenty years from the date of its issuance, or twenty years from the most recent date that the United States or the Federal Trade Commission files a complaint (with or without an accompanying consent decree) in federal court alleging any violation of the Order, whichever comes later; provided, however, that the filing of such a complaint will not affect the duration of:

A. Any paragraph in this Order that terminates in less than twenty years;

B. This Order's application to any respondent that is not named as a defendant in such complaint; and

C. This Order if such complaint is filed after the Order has terminated pursuant to this paragraph.

Provided further, that if such complaint is dismissed or a federal court rules that the respondent did not violate any provision of the Order, and the dismissal or ruling is either not appealed or upheld on appeal, then the Order will terminate according to this paragraph as though the complaint was never filed, except that the Order will not terminate between the date such complaint is filed and the later of the deadline for appealing such dismissal or ruling and the date such dismissal or ruling is upheld on appeal.

*VII.*

It is further ordered that respondent shall, within sixty (60) days from the date of service of this Order upon it, and at such other times as the Commission may require, file with the Commission a report, in writing, setting forth in detail the manner and form in which it has complied with this Order.

## Analysis of Proposed Consent Order to Aid Public Comment

The Federal Trade Commission has accepted an agreement, subject to final approval, to a proposed consent order from respondent NordicTrack, Inc., (''NordicTrack'') a Minnesota corporation.

The proposed consent order has been placed on the public record for sixty (60) days for reception of comments by interested persons. Comments received during this period will become part of the public record. After sixty (60) days, the Commission will again review the agreement and the comments received and will decide whether it should withdraw from the agreement and take other appropriate action or make final the agreement's proposed order.

NordicTrack manufacturers and distributes various exercise equipment to consumers, including its cross-country ski exercisers. The Commission's complaint charges that respondent's advertising contained false or unsubstantiated representations relating to the weight loss and weight maintenance experience of NordicTrack owners. Specifically, the complaint alleges that the respondent did not possess adequate substantiation for claims that: (1) seventy or eighty percent of those who purchased a NordicTrack cross-country ski exerciser to lose weight lost an average of seventeen pounds; (2) eighty percent of those who purchased a NordicTrack cross-country ski exerciser to lose weight and lost weight using it maintained all of their weight loss for at least a year; (3) eighty percent of those who purchased a NordicTrack cross-country ski exerciser to lose weight maintained all of their weight loss at least a year; and (4) consumers who use NordicTrack cross-country ski exercisers for twenty minutes a day, three times per week, lose an average of eighteen pounds in twelve weeks. In addition, the compliant alleges that the respondent falsely represented that it had competent and reliable research or studies which prove these claims.

The complaint alleges that respondent based its success rate claims on studies which suffered from various methodological flaws. For example, the results of the studies reflect the experiences of only a highly selected population of purchasers who were able to integrate the NordicTrack cross-country ski exerciser into their regular, weekly, exercise regime. One such study involved putting thirty-eight participants through a rigorous twelve-week exercise program. Respondent based weight-loss claims on the average weight loss experienced by the twenty participants (53 percent) able to complete the program. The studies also failed to take into account changes in the dietary habits of purchasers. Furthermore, the studies were based on self-reported body weights, unadjusted for bias, which may yield inaccurate results.

The proposed consent order contains provisions designed to remedy the violations charged and to prevent the respondent from engaging in similar acts and practices in the future. Part I of the proposed order would prohibit the company from making any claim for any exercise equipment regarding: (1) the percentage of its customers who have successfully lost weight; (2) the percentage of its customers who have successfully maintained weight loss; (3) the number of pounds lost by its customers; (4) the percentage of weight loss maintained by its customers; (5) the rate or speed at which its customers have experienced weight loss; (6) the length of time its customers must use such product to achieve weight loss; (7) the comparative efficacy of any other weight loss method or methods; or (8) the benefits, efficacy, or performance of such product in promoting weight loss or weight loss maintenance, unless at the time of making them, they possess and rely upon competent and reliable evidence.

Part II of the proposed order prohibits the company from misrepresenting in any manner, directly or by implication, the existence, contents, validity, results, conclusions, or interpretations of any test, study or survey relating to weight loss, weight loss maintenance or comparisons with the efficacy of other weight loss methods.

The proposed order also requires the respondent to maintain materials relied upon to substantiate claims covered by the order; to provide a copy of the consent agreement to all employees or representatives involved in the preparation and placement of the company's advertisements, as well as to all company executives and marketing and sales managers; to notify the Commission of any changes in corporate structure that might affect compliance with the order; and to file one or more reports detailing compliance with the order.

The purpose of this analysis is to facilitate public comment on the proposed order. It is not intended to constitute an official interpretation of the agreement and proposed order or to modify in any way their terms.

Donald S. Clark,

*Secretary.*

[FR Doc. 96–4693 Filed 2–28–96; 8:45 am]

BILLING CODE 6750–01–M

## DEPARTMENT OF HEALTH AND HUMAN SERVICES

### Health Care Financing Administration

**[ORD–085–N]**

### New and Pending Demonstration Project Proposals Submitted Pursuant to Section 1115(a) of the Social Security Act: January 1996

**AGENCY:** Health Care Financing Administration (HCFA).

**ACTION:** Notice.

**SUMMARY:** This notice identifies proposals submitted during the month of January 1996 under the authority of section 1115 of the Social Security Act and those that were approved, disapproved, pending, or withdrawn during this time period. (This notice can be accessed on the Internet at HTTP://WWW.SSA.GOV/HCFA/HCFAHP2.HTML.)

**FOR FURTHER INFORMATION CONTACT:** Susan Anderson, Office of Research and Demonstrations, Health Care Financing Administration, Mail Stop C3–11–07, 7500 Security Boulevard, Baltimore, MD 21244–1850. (410) 786–3996.

**SUPPLEMENTARY INFORMATION:**

I. Background

Under section 1115 of the Social Security Act (the Act), the Department of Health and Human Services (HHS) may consider and approve research and demonstration proposals with a broad range of policy objectives. These demonstrations can lead to improvements in achieving the purposes of the Act.

As part of our established procedures, we normally publish a monthly notice in the Federal Register with a listing of all new submissions, pending proposals, approvals, disapprovals, and withdrawn proposals. Proposals submitted in response to a grant solicitation or other competitive process are reported as received during the month that such grant or bid is awarded, so as to prevent interference with the awards process. In the month of December we received no new proposals and no changes to pending proposals.

II. New, Pending, Approved, and Withdrawn Proposals for the Month of January 1996

During the month of January 1996 we received no new Comprehensive Health Reform Programs or Other Section 1115 Demonstration Proposals. We did not approve or disapprove any proposals during January 1996 nor were any proposals withdrawn during that month. Pending proposals for the month of November, 1995 published in the Federal Register on January 23, 1996, 61 FR 1769, remain unchanged for the month of January.

III. Requests for Copies of a Proposal

Requests for copies of a specific Medicaid proposal should be made to the State contact listed for the specific proposal in the notice published on January 23, 1996. If further help or information is needed, inquiries should be directed to HCFA at the address above.

(Catalog of Federal Domestic Assistance Program, No. 93.779; Health Financing Research, Demonstrations, and Experiments.)

Dated: February 21, 1996.

Bruce C. Vladeck,

*Administrator, Health Care Financing Administration.*

[FR Doc. 96–4573 Filed 2–28–96; 8:45 am]

**BILLING CODE 4120–01–P**

## National Institutes of Health

### National Institute of Dental Research; Notice of Closed Meeting of the National Advisory Dental Research Council

Pursuant to Section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following meeting:

*Name of Committee:* National Advisory Dental Research Council.

*Date:* March 5, 1996.

*Time:* 1:00 p.m. to Adjournment.

*Place:* National Institutes of Health, 45 Center Drive, Natcher 4AS–10, Bethesda, Maryland 20892, (teleconference).

*Contact Person:* Dr. Dushanka V. Kleinman, Executive Secretary, National Advisory Dental Research Council, Building 31, Room 2C39, Bethesda, MD 20892, (301) 496–9469.

*Purpose/Agenda:* For the review, discussion and evaluation of individual grant application.

The meeting will be closed in accordance with the provisions set forth in secs. 552b(c)(4) and 552b(c)(6), Title 5, U.S.C. Applications and/or proposals and the discussions could reveal confidential trade secrets or commercial property such as patentable material and personal information concerning individuals associated with the applications and/or proposals, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

This notice is being published less than fifteen days prior to the meeting due to the partial shutdown of the Federal Government and the urgent need to meet timing limitations imposed by the review and funding cycle.

(Catalog of Federal Domestic Assistance Program No. 93.121, Dental Research Institute; National Institutes of Health, HHS)

Dated: February 26, 1996.

Susan K. Feldman,

*Committee Management Officer, NIH.*

[FR Doc. 96–4728 Filed 2–27–96; 10:29 am]

**BILLING CODE 4140–01–M**

## National Institutes of Health

### Division of Research Grants; Notice of Closed Meetings

Pursuant to Section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following Division of Research Grants Special Emphasis Panel (SEP) meetings:

*Purpose/Agenda:* To review individual grant applications.

*Name of SEP:* Biological and Physiological Sciences.

*Date:* March 2, 1996.

*Time:* 8:00 a.m.

*Place:* American Inn of Bethesda, Bethesda, Maryland.

*Contact Person:* Dr. Nicholas Mazarella, Scientific Review Administrator, 6701 Rockledge Drive, Room 5128, Bethesda, Maryland 20892, (301) 435–1018.

*Name of SEP:* Biological and Physiological Sciences.

*Date:* March 7, 1996.

*Time:* 1:00 p.m.

*Place:* NIH, Rockledge 2, Room 5112, Telephone Conference.

*Contact Person:* Dr. Harish Chopra, Scientific Review Administrator, 6701 Rockledge Drive, Room 5112, Bethesda, Maryland 20892, (301) 435–1169.

*Name of SEP:* Biological and Physiological Sciences.

*Date:* March 14, 1996.

*Time:* 1:00 p.m.

*Place:* NIH, Rockledge 2, Room 5146, Telephone Conference.

*Contact Person:* Dr. Ramesh Nayak, Scientific Review Administrator, 6701 Rockledge Drive, Room 5146, Bethesda, Maryland 20892, (301) 435–1026.

This notice is being published less than 15 days prior to the above meetings due to the partial shutdown of the Federal Government and the urgent need to meet timing limitations imposed by the grant review and funding cycle.

The meetings will be closed in accordance with the provisions set forth in secs. 552b(c)(4) and 552b(c)(6), Title 5, U.S.C. Applications and/or proposals and the discussions could reveal confidential trade secrets or commercial property such as patentable material and personal information concerning individuals associated with the applications and/or proposals, the

disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

(Catalog of Federal Domestic Assistance Program Nos. 93.306, 93.333, 93.337, 93.393–93.396, 93.837–93.844, 93.846–93.878, 93.892, 93.893, National Institutes of Health, HHS)

Dated: February 26, 1996.

Susan K. Feldman,

*Committee Management Officer, NIH.*

[FR Doc. 96–4727 Filed 2–27–96; 10:29 am]

**BILLING CODE 4140–01–M**

## DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

### Office of the Assistant Secretary for Public and Indian Housing

**[Docket No. FR–3769–N–04]**

### Announcement of Funding Awards; Traditional Indian Housing Development Program; Fiscal Year 1995

**AGENCY:** Office of the Assistant Secretary for Public and Indian Housing, HUD.

**ACTION:** Announcement of funding awards.

**SUMMARY:** In accordance with section 102(a)(4)(C) of the Department of Housing and Urban Development Reform Act of 1989, this document notifies the public of funding awards for Fiscal Year 1995 for the Traditional Indian Housing Development Program. The purpose of this Notice is to publish the names and addresses of the award winners and the amount of the awards made available by HUD to provide assistance to the Indian Housing Development Program.

**FOR FURTHER INFORMATION CONTACT:** Bruce Knott, Director, Housing and Community Development Division, Office of Native American Programs, Department of Housing and Urban Development, Room B–133, 451 Seventh Street, SW, Washington, DC 20410–7000; telephone (202) 755–0068 (this is not a toll-free number). Hearing- or speech-impaired persons may use the Telecommunications Devices for the Deaf (TDD) by contacting the Federal Information Relay Service at 1–800–877–8339.

**SUPPLEMENTARY INFORMATION:**

The Indian Housing Development program is authorized by sections 5 and 6, U. S. Housing Act of 1937 (42 U. S. C. 1437c, 1437d), as amended; U. S. Department of Housing and Urban Development and Independent Agencies Appropriations Act for Fiscal Year 1995; Section 23 U. S. Housing Act of 1937, as added by section 554, Cranston-Gonzalez National Affordable Housing Act; section 7(d), Department of Housing and Urban Development Act (42 U. S. C. 3535(d).

This Notice announces FY 1995 funding of $225,596,316 to be used to assist in job training, employment, contracting and other economic opportunities to section 3 residents and section 3 business concerns. The FY 1995 awards announced in this Notice were selected for funding consistent with the provisions in the Notice of Funding Availability published in the Federal Register on January 20, 1995 (60 FR 4330).

In accordance with section 102(a)(4)(C) of the Department of Housing and Urban Development Reform Act of 1989 (Pub. L. 101–235, approved December 15, 1989), the Department is hereby publishing the names, addresses, and amounts of those awards as shown in Appendix A.

Dated: February 26, 1996.

Kevin Emanuel Marchman,

*Acting Assistant Secretary for Public and Indian Housing.*

Appendix A

FISCAL YEAR 1995—PUBLIC AND INDIAN HOUSING RECIPIENTS OF FINAL FUNDING DECISIONS

| Funding recipient (name and address) | Amount approved | Number of projected units |
|---|---|---|
| Absentee Shawnee Tribe, P.O. Box 425, Shawnee OK, 74801 | $11,690,265 | 150 |
| Akwesasne Indian Housing Authority, Route 37 P.O. Box 540, Hogansburg, NY, 13655– | 4,254,494 | 40 |
| Aleutian HA, 401 East Fireweed Lane, #101, Anchorage, AK, 99501– | 2,138,384 | 12 |
| All Mission Indian Housing Authority, 1523 E. Valley Pkwy., Escondido CA, 92027– | 4,903,078 | 42 |
| AVCP HA, Post Office Box 767, Bethel, AK, 99559– | 217,632 | 40 |
| Bad River Housing Authority, P.O. Box 57, Odanah, WI, 54861– | 881,826 | 10 |
| Bay Mills Housing Authority, Route 1, Box 3345, Brimley, MI, 49715– | 2,958,875 | 40 |
| Bering Straits Reg HA, Post Office Box 995, Nome, AK, 99762 | 3,561,797 | 40 |
| Blackfeet, P.O. Box 790, Browning, MT, 59417 | 74,920 | 1 |
| Bristol Bay HA, Post Office Box 50, Dillingham, AK, 99576– | 6,562,490 | 40 |
| Cascade Inter-Tribal, 2286 Community Plaza, Sedro Woolley, WA, 98284– | 2,159,900 | 20 |
| Choctaw Housing Authority, P.O. Box 6088 Choctaw Branch, Philadelphia, MS, 39350– | 2,801,840 | 40 |
| Choctaw Nation, P.O. Box G, Hugo, OK, 74743 | 11,540,960 | 150 |
| Coeur d'Alene, P.O. Box 267 1005 8th Street, Plummer, ID, 83851– | 3,659,671 | 34 |
| Comanche Tribe IHA, P.O. Box 1671, Lawton, OK, 73502– | 5,578,204 | 80 |
| Cook Inlet HA, 670 West Fireweed Lane, Anchorage, AK, 99503– | 4,262,208 | 40 |
| Delaware Tribe IHA, P. O. Box 334, Chelsea, OK, 74016 | 3,053,660 | 40 |
| Duck Valley Housing Authority, P.O. Box 129, Owyhee, NV, 89832– | 1,642,871 | 15 |
| Fond du Lac Reservation Housing Authority, 932 Trettel Lane, Cloquet, MN, 55720– | 3,352,500 | 30 |
| Forrest County Potowatomi Housing Authority, P.O. Box 346, Crandon, WI, 54520– | 1,359,702 | 20 |
| Hoopa Valley Indian Housing Authority, P.O. Box 1285, Hoopa, CA, 95546– | 4,846,769 | 32 |
| Kodiak Island HA, 2815 Woody Way, Kodiak, AK, 99615– | 2,300,000 | 14 |
| Lower Elwha, 127 E. First—Suite 3E, Port Angeles, WA, 98362– | 2,472,330 | 20 |
| Makah, P.O. Box 88, Neah Bay, WA, 98357–0088 | 2,252,060 | 20 |
| Mesa Grande IHA, 4040 30th St, Suite 204, San Diego, CA, 92104 | 2,346,114 | 16 |
| Mescalero Apache Housing Authority, P.O. Box 176, Mescalero, NM, 88340– | 3,410,626 | 32 |
| Mille Lacs Reservation Housing Authority, HCR 67, Box 194, Onamia, MN, 56359– | 4,484,500 | 40 |
| Modoc-Lassen Indian Housing Authority, Drawer 2028, Susanville, CA, 96130– | 2,180,019 | 20 |
| Navajo Housing Authority, P.O. Box 387, Window Rock, AZ, 86515– | 32,238,095 | 278 |
| Northern Arapaho, P.O. Box 396, Ft. Wahsake, WY 82514 | 4,093,612 | 40 |
| Northern Cheyenne, P.O. Box 327, Lame Deer, MT, 59043 | 2,208,015 | 20 |
| Northern Pueblos Housing Authority, P.O. Box 3502, Pojoaque, NM, 87501– | 4,573,150 | 40 |

FISCAL YEAR 1995—PUBLIC AND INDIAN HOUSING RECIPIENTS OF FINAL FUNDING DECISIONS—Continued

| Funding recipient (name and address) | Amount approved | Number of projected units |
|---|---|---|
| Northwest Inupiat HA, P.O. Box 331, Kotzebue, AK, 99752– | 5,743,069 | 37 |
| Oglala Sioux, P.O. Box C, Pine Ridge, SD, 57770 | 3,951,111 | 40 |
| Oneida Housing Authority, P.O. Box 68, Oneida, WI, 54155– | 3,272,202 | 40 |
| Poarch Creek Indian Housing Authority, HCR 69A, Box 85B, Atmore, AL, 36502– | 1,669,083 | 30 |
| Port Gamble Sklallam, P.O. Box 155, Kingston, WA, 98346–0155 | 1,716,644 | 16 |
| Qualla Housing Authority, P.O. Box 1749, Acquoni Road, Cherokee, NC, 28719–1749 | 2,369,083 | 40 |
| Red Lake Reservation Housing Authority, P.O. Box 219 Highway 1 East, Red Lake, MN, 56671– | 4,563,808 | 40 |
| Reno-Sparks Indian Housing Authority, 15–A Reservation Rd., Reno, NV, 89502– | 3,509,778 | 32 |
| Rosebud, P.O. Box 69, Rosebud, SD, 57570 | 2,097,330 | 20 |
| Salish-Kootenai, P.O. Box 38, Pablo, MT, 59855 | 4,160,270 | 40 |
| Sault Ste. Marie Tribal Housing Authority, 2218 Shunk Road, Sault Ste. Marie, MI, 49783– | 364,739 | 3 |
| Seminole Nation, P.O. Box 1493, Wewoka, OK, 74884 | 533,955 | 8 |
| Siletz Indian, P.O. Box 549, Siletz, OR, 97380– | 2,100,826 | 20 |
| So Puget Sd Inter-Tribal, S.E. 11 Squaxin Drive, Shelton, WA, 98584– | 1,988,587 | 20 |
| Standing Rock, P.O. Box 484, Fort Yates, ND 58538 | 4,351,633 | 40 |
| Tagiugmiuulu Nunamiullu HA, Post Office Box 409, Barrow, AK, 99723 | 6,745,186 | 40 |
| Tlingit-Haida Reg. HA, P.O. Box 32237, Juneau, AK, 99803–2237 | 7,019,274 | 40 |
| Tulalip, 3107 Reuben Shelton Dr., Marysville, WA, 98271– | 2,487,951 | 20 |
| Turtle Mountain, P.O. Box 620, Belcourt, ND, 58316 | 75,169 | 1 |
| Umatilla Reservation, P.O. Box 1658, Pendleton, OR, 97801–0510 | 4,377,850 | 40 |
| Utah Paiute HA, 664 North, 100 East, Cedar City, UT, 84720 | 1,886,060 | 20 |
| White Mountain Apache Housing Authority, P.O. Box 1270, Whiteriver, AZ, 85941– | 8,450,785 | 80 |
| Wichita IHA, P.O. Box 729, Anandarko, OK, 73005 | 5,884,160 | 80 |
| Ysleta del Sur Pueblo Housing Authority, P.O. Box 17579 Ysleta Station, El Paso, TX, 79917 | 2,217,196 | 25 |
| Totals | 225,596,316 | 2,228 |

[FR Doc. 96–4694 Filed 2–28–96; 8:45 am]
BILLING CODE 4210–33–P

## DEPARTMENT OF THE INTERIOR

### Fish and Wildlife Service

### Notice of Receipt of Applications for Permit

The following applicants have applied for a permit to conduct certain activities with endangered species. This notice is provided pursuant to Section 10(c) of the Endangered Species Act of 1973, as amended (16 U.S.C. 1531, *et seq.*):

PRT–799227

*Applicant:* Riverbanks Zoological Park, Columbia, SC.

The applicant requests an amendment to US 799227, to include the import of preserved kidneys from captive-held and captive-born specimens of black-footed cat (*Felis nigripes*) that have died in captivity in European and African zoos for the purpose of scientific research to enhance the survival of the species.

PRT–809007

*Applicant:* Mark Schriver, Orwigsburg, PA.

The applicant requests a permit to export 3 male and 2 female peregrine falcons (*Falco peregrinus*) to Rashid Bin Khalifa Al Maktoum for the purposes of enhancement of the survival of the species through captive propagation.

Written data or comments should be submitted to the Director, U.S. Fish and Wildlife Service, Office of Management Authority, 4401 North Fairfax Drive, Room 420(c), Arlington, Virginia 22203 and must be received by the Director within 30 days of the date of this publication.

The public is invited to comment on the following application(s) for permits to conduct certain activities with marine mammals. The application(s) was/were submitted to satisfy requirements of the Marine Mammal Protection Act of 1972, as amended (16 U.S.C. 1361 *et seq.*) and the regulations governing marine mammals (50 CFR 18).

PRT–805014

*Applicant:* Hofstra University, c/o Victoria Spain, Hempstead, NY.

*Type of Permit*: Import for public Display.

*Name and Number of Animals*: Polar Bear (*Ursus maritimus*), 2.

*Summary of Activity to be Authorized*: The applicant has requested a permit to import for the purposes of public display in association with a university education program a skin and a pair of pants from two polar bears which were legally harvested by Native hunters in Canada.

*Source of Marine Mammals for Research/Public Display*: Canada.

*Period of Activity*: Up to five years from issuance of a permit, if issued.

Concurrent with the publication of this notice in the Federal Register, the Office of Management Authority is forwarding copies of this application to the Marine Mammal Commission and the Committee of Scientific Advisors for their review.

Written data or comments, requests for copies of the complete application, or requests for a public hearing on this application should be sent to the U.S. Fish and Wildlife Service, Office of Management Authority, 4401 N. Fairfax Drive, Room 420(c), Arlington, Virginia 22203, telephone 703/358–2104 or fax 703/358–2281 and must be received within 30 days of the date of publication of this notice. Anyone requesting a hearing should give specific reasons why a hearing would be appropriate. The holding of such hearing is at the discretion of the Director.

Documents and other information submitted with these applications are available for review, subject to the requirements of the Privacy Act and Freedom of Information Act, by any party who submits a written request for a copy of such documents to the following office within 30 days of the date of publication of this notice: U.S. Fish and Wildlife Service, Office of Management Authority, 4401 North Fairfax Drive, Room 420(c), Arlington, Virginia 22203. Phone: (703/358–2104); FAX: (703/358–2281).

Dated: February 23, 1996.

Caroline Anderson,

*Acting Chief, Branch of Permits, Office of Management Authority.*

[FR Doc. 96–4594 Filed 2–28–96; 8:45 am]

BILLING CODE 4310–55–P

## Fish and Wildlife Service

### Issuance of Permit for Marine Mammals

On November 30, 1995, a notice was published in the Federal Register, Vol. 60, No. 230, Page 61571, that an application had been filed with the Fish and Wildlife Service by Denver Zoological Gardens for a permit (PRT–807412) to import milk and blood samples collected from polar bears (*Ursus maritimus*) and freezer-banked as surplus to the needs of Canadian researchers.

Notice is hereby given that on February 8, 1996, as authorized by the provisions of the Marine Mammal Protection Act of 1972, as amended (16 U.S.C. 1361 *et seq.*) the Fish and Wildlife Service authorized the requested permit subject to certain conditions set forth therein.

Documents and other information submitted for these applications are available for review by any party who submits a written request to the U.S. Fish and Wildlife Service, Office of Management Authority, 4401 North Fairfax Drive, Rm 420(c), Arlington, Virginia 22203. Phone (703) 358–2104 or Fax (703) 358–2281.

Dated: February 23, 1996.

Caroline Anderson,

*Acting Chief, Branch of Permits, Office of Management Authority.*

[FR Doc. 96–4595 Filed 2–28–96; 8:45 am]

BILLING CODE 4310–55–P

## Geological Survey

### Request for Public Comments on Proposed Information Collections To Be Submitted to the Office of Management and Budget for Review Under the Paperwork Reduction Act

The proposals for the two collections of information described below will be submitted to the Office of Management and Budget for approval under the provisions of the Paperwork Reduction Act (44 U.S.C. Chapter 35). Copies of the proposed collections of information and related forms may be obtained by contacting the Bureau's clearance officer at the phone number listed below. Comments and suggestions on the proposal should be made within 60 days directly to the Bureau clearance officer, U.S. Geological Survey, 208 National Center, 12201 Sunrise Valley Drive., Reston, Virginia, 22092, telephone (703) 648–7313.

Collection No. 1

*Title:* Earthquake Report.
*OMB approval number:* 1028–0048.
*Abstract:* Respondents supply information on the effects of the shaking from an earthquake—on themselves personally, buildings and their effects, other man-made structures, and ground effects such as faulting or landslides. This information will be used in the study of the hazards from earthquakes and used to compile and publish the annual USGS publication ''United States Earthquakes''.
*Bureau form number:* 9–3013.
*Frequency:* After each earthquake.
*Description of respondents:* State and local employees; and, the general public.
*Estimated completion time:* 0.1 hours.
*Annual responses:* 1,500.
*Annual burden hours:* 150 hours.

Collection No. 2

*Title:* Tsunami Questionnaire.
*OMB approval number:* 1028–0049.
*Abstract:* Respondents supply information on the effects of earthquake-related tsunamis on themselves personally, buildings and their effects, other man-made structures, and coastal areas. This information will be used in the study of the hazards from earthquakes and tsunamis.
*Bureau form number:* 9–3014.
*Frequency:* After each tsunami.
*Description of respondents:* State and local employees; and the general public.
*Estimated completion time:* 0.1 hours.
*Annual responses:* 200.
*Annual burden hours:* 20 hours.
*Bureau clearance officer:* John Cordyack, 703–648–7313.

Dated: February 13, 1996.

David P. Russ,

*Acting Associate Chief, Geologist for Program Operations.*

[FR Doc. 96–4647 Filed 2–28–96; 8:45 am]

BILLING CODE 4310–31–M

### Federal Geographic Data Committee (FGDC); Public Meeting of the FGDC Facilities Working Group

**AGENCY:** U.S. Geological Survey, Interior.

**ACTION:** Notice of meeting.

**SUMMARY:** This notice is to invite public participation in a meeting of the FGDC Facilities Working Group. The major topic for this meeting is the development of a Facility/Installation ID standard.

**TIME AND PLACE:** 11 March 1996, from 1:00 p.m. until 4:00 p.m. The meeting will be held at Headquarters U.S. Army Corps of Engineers, in Room 7233 of the Pulaski Building, 20 Massachusetts Avenue NW., Washington, DC. The Pulaski building is located just a few blocks west of Union Station.

**FOR FURTHER INFORMATION CONTACT:**

Jennifer Fox, FGDC Secretariat, U.S. Geological Survey, 590 National Center, 12201 Sunrise Valley Drive, Reston, Virginia 22092; telephone (703) 648–5514; facimile (703) 648–5755; Internet ''gdc@usgs.gov''.

**SUPPLEMENTARY INFORMATION:** The FGDC is a committee of Federal Agencies engaged in geospatial activities. The FGDC Facilities Working Group specifically focuses on geospatial data issues related to facilities and facility management. A facility is an entity with location, deliberately established as a site for designated activities. A facility database might describe a factory, a military base, a college, a hospital, a power plant, a fishery, a national park, an office building, a space command center, or a prison. The database for a complex facility may describe multiple functions or missions, multiple buildings, or even a county, town, or city. The objectives of the Working Group are to: promote standards of accuracy and currentness in facilities data that are financed in whole or in part by Federal funds; exchange information on technological improvements for collecting facilities data; encourage the Federal and non-Federal communities to identify and adopt standards and specifications for facilities data; and promote the sharing of facilities data among Federal and non-Federal organizations.

Dated: February 21, 1996.

Richard E. Witmer,

*Acting Chief, National Mapping Division.*

[FR Doc. 96–4646 Filed 2–28–96; 8:45 am]

BILLING CODE 4310–31–M

## Bureau of Land Management

**[AZ–040–7122–00–5514; AZA 28789]**

## Extension of the Public Comment Period for the Draft Environmental Impact Statement (DEIS) for the Morenci Land Exchange, Greenlee County, Arizona

**AGENCY:** Bureau of Land Management, Interior.

**ACTION:** Extension of the public comment period for the Draft Environmental Impact Statement for the Morenci Land Exchange.

**SUMMARY:** Due to the recent shutdown of the Federal Government, the Bureau of Land Management has elected to extend the public comment period on the DEIS for the Morenci Land Exchange. Comments will be accepted until March 12, 1996.

**ADDRESS:** Send written comments to the Bureau of Land Management, Safford District Office, Attention: Scott Evans, Project Manager, 711 14th Avenue, Safford, Arizona 85546.

**FOR FURTHER INFORMATION CONTACT:** Scott Evans, Project Manager, Mike McQueen, NEPA Compliance Officer, at BLM, Safford District Office, Telephone (520) 428–4040.

Dated: February 21, 1996.

Frank L. Rowley,

*Acting District Manager.*

[FR Doc. 96–4646 Filed 2–28–96; 8:45 am]

**BILLING CODE 4310–32–M**

**[CO–050–1430–01; COC–57167 et al]**

## Notice of Realty Action; Recreation and Public Purposes (R&PP) Act Classifications; Colorado

**AGENCY:** Bureau of Land Management

**ACTION:** Notice of realty action.

**SUMMARY:** The following public lands in Eastern Colorado have been examined and found suitable for classification for lease or conveyance under the provisions of the Recreation and Public Purposes Act, as amended (43 U.S.C. 869 et seq.)

*COC57167*—Boulder County proposes to use these lands for educational, scientific and cultural preservation purposes in the Indian Mountain area: Sixth Principal Meridian, T.3N., R.70W., Sec. 8 NE¼SE¼. Containing 40 acres in Boulder County.

*COC57166*—Boulder County proposes to use these lands for recreational purposes by adding to the Hall Ranch Open Space:

Sixth Principal Meridian

T.3N., R.71W.,
Sec. 11, SE¼SW¼, SE¼SE¼;
Sec. 13, Lots 1, 2, 3;
Sec. 14, Lots 1, 2, 6 through 9;
Sec. 22, SE¼SW¼, S½SE¼,
Sec. 23, Lots 1, 2.

Containing 640.78 acres in Boulder County.

*COC54367*—Colorado Division of Wildlife proposes to use these lands for recreational and wildlife management purposes by adding to the Watson Lake Unit:

Sixth Principal Meridian,

T.8N., R.69W.,
Sec. 19, Lot 4.
Containing 44.78 acres in Larimer County.

*COC54054*—Colorado Division of Parks and Outdoor Recreation proposes to use these lands for inclusion in the North Sterling State Park:

Sixth Principal Meridian.

T.9N., R.53W.,
Sec. 3, Lots 1 through 4, Sec. 3, SW¼NE¼, SE¼NW¼, E½SE¼;
Sec. 4, E½SE¼.
Sec. 9, W½NW¼, SE¼NW¼, NE¼SW¼, NW¼SE¼;
Sec. 10, S½SW¼.

Containing 681.18 acres in Logan County.

*COC38658*—Colorado Division of Wildlife proposes to use these lands for inclusion in the Tamarack State Wildlife area for recreation and wildlife management purposes:

Sixth Principal Meridian,

T.10 N., R.48W.,
Sec. 22, N½SE¼, NE¼SW¼.

Containing 120 acres in Logan County.

*COC54366*—Colorado Division of Wildlife proposes to use these lands for inclusion in the Cherokee Park Wildlife area for recreational and wildlife management purposes:

Sixth Principal Meridian

T.10N., R.71W.,
Sec. 30, NE¼NW¼,
T.11N., R.71W.;
Sec. 30, Lots 1, 2, 3;
Sec. 30, NE¼NW¼.

Containing 201.55 acres in Larimer County.

*COC57771*—Fremont School District RE–3 proposes to use these lands for establishing a baseball/recreational athletic field:

New Mexico Principal Meridian

T.48N., R.12E.,
Sec. 30, Lot 13 (within);
Sec. 31, Lot 6 (within).

Containing 15 acres in Fremont County. Classification of this parcel is for ''lease only''.

*COC53355*—Clear Creek Land Conservancy proposes to use these lands for recreational purposes:

Sixth Principal Meridian

T.3S., R.72W.,
Sec. 26, NE¼SW¼NW¼,
E½NW¼SW¼NW¼,
NE¼SW¼SW¼NW¼;
Sec. 26, N½SE¼SW¼NW¼,
SE¼SE¼SW¼NW¼, S½NW¼SW¼;
Sec. 26, W½NW¼NW¼SW¼,
S½SW¼NE¼SW¼, SE¼SW¼,
SW¼SE¼;
Sec. 27, N½SW¼NE¼,
N½NW¼SE¼NE¼, S½S½SE¼NE¼,
N½SE¼, S½SE¼.

Containing 330 acres in Gilpin County.

*COC58926*—City of Central proposes to use these lands for municipal purposes:

Sixth Principal Meridian

T.3S., R.73W.,
Sec. 11, NW¼NE¼, NE¼NW¼,
N½SE¼NW¼.

Containing 16 acres in Gilpin County.

*COC57819*—Jefferson County proposes to use these lands for recreational purposes:

Sixth Principal Meridian

T.4S., R.72W.,
Sec. 1, Lots 1, 4 (within).

Containing approximately 40 acres in Jefferson County.

*COC58144*—Jefferson County proposes to use these lands for incorporation into Pine Valley Ranch Park:

Sixth Principal Meridian

T.7S., R.71W.,
Sec. 29, S½SW¼.

Containing 80 acres in Jefferson County.

The lands are not needed for Federal purposes. Lease or conveyance for recreational use is consistent with current BLM land use planning and would be in the public interest.

Upon publication of this notice in the Federal Register, the lands will be segregated from all forms of appropriation under the public land laws, including the general mining laws, except for lease or conveyance under the Recreation and Public Purposes Act.

**DATES:** Interested parties may submit comments regarding the proposed lease/conveyance or classification of the lands before April 8, 1996. Reference the applicable serial number in all correspondence. In the absence of any adverse comments, the classification will become effective 60 days from the date of publication of this notice in the Federal Register.

**ADDRESSES:** District Manager, Canon City District Office, or Area Manager, Royal Gorge Resource Area, 3170 East Main, Canon City, Colorado 81212.

**FOR FURTHER INFORMATION CONTACT:** Lindell Greer, Realty Specialist at (719) 269–8532.

**SUPPLEMENTARY INFORMATION:** Classification comments—interested parties may submit comments involving the suitability of the land for the purposes stated. Comments on the classification are restricted to whether the land is physically suited for the proposal, whether the use will maximize the future use or uses of the land, whether the use is consistent with local planning and zoning, or if the use is consistent with State and Federal programs.

Application comments—interested parties may submit comments regarding the specific use proposed in the application and plan of development, whether the BLM followed proper administrative procedures in reaching the decision, or any other factor not directly related to the suitability of the land for the proposals.

Donnie R. Sparks,

*District Manager.*

[FR Doc. 96–4675 Filed 2–28–96; 8:45 am]

**BILLING CODE 4310–JB–M**

**[AZ–040–06–1230–00]**

## Fourmile Canyon Campground Use Fee and Supplementary Rules

**AGENCY:** Bureau of Land Management, Safford District, Arizona.

**ACTION:** Establishment of use fees and supplementary rules at Fourmile Canyon Campground.

**SUMMARY:** Use fees at Fourmile Canyon Campground are established at $4.00 per campsite. Supplementary rules for use of the campground are also established.

**EFFECTIVE DATE:** April 8, 1996.

**FOR FURTHER INFORMATION CONTACT:** Steve Knox, Outdoor Recreation Planner, Gila Resource Area, Bureau of Land Management, 711 14th Avenue, Safford, Arizona 85546, (520) 428–4040.

**SUPPLEMENTARY INFORMATION:** Fourmile Canyon Campground is a ten-unit campground located about 50 miles west of Safford in southeastern Arizona. Under the authority of 36 CFR 71.9, a use fee of $4.00 per campsite will be charged for both overnight camping and day use activities (like picnicking) at Fourmile Canyon Campground. Checkout time for overnight users is 2:00 p.m. Fees must be paid at the self-service pay station located in the campground. People who hold Golden Age or Golden Access Passports are entitled to a 50 percent reduction of the fee.

In addition to the use fee, the following supplementary rules are also established for use of the campground:

1. Fees must be paid within ½ hour of arrival to the campground.
2. Camping is permitted at developed (numbered) sites only, except as noted below for the ''overflow area'' of the campground.
3. A maximum of two vehicles are permitted to park at each developed campsite.
4. Vehicles and camping gear may not be left unattended in the campground for longer than 24 hours.
5. Quiet hours are established from 10:00 p.m. to 6:00 a.m. No loud music, operation of generators, or other disturbing activities are permitted in the campground during these hours.
6. Campfires are permitted in developed fire grills only, except as noted below for the ''overflow area'' of the campground.
7. No firewood may be cut or broken from standing live or dead vegetation.
8. Maximum length of stay in the campground is 14 consecutive days.
9. Pets must be kept on a leash in the campground.
10. Firearms, bows and arrows, other weapons, or air rifles and pistols may not be discharged in the campground.
11. Game may not be cleaned in the campground. These rules are established under the authority contained in 43 CFR 8365.1–6.

The $4.00 per campsite use fee is also required for the ''overflow area'' of the campground. If all of the developed sites are occupied, camping is permitted in the ''overflow area.'' A maximum of two camps, and two vehicles per camp are permitted in the ''overflow area.'' A campsite is also permitted at each camp in the ''overflow area.''

Violations of these rules are punishable by a fine not to exceed $1,000, and/or imprisonment not to exceed 12 months (43 CFR 8360.0–7).

Dated: February 21, 1996.

Frank Rowley,

*Acting District Manager.*

[FR Doc. 96–4650 Filed 2–28–96; 8:45 am]

**BILLING CODE 4310–32–M**

## Bureau of Reclamation

## Proposed Long-Term Water Service Contract Renewal; Frenchman-Cambridge and Bostwick Divisions; Pick-Sloan Missouri Basin Program; Nebraska and Kansas

**AGENCY:** Bureau of Reclamation, Interior.

**ACTION:** Notice of intent to prepare a draft environmental impact statement.

**SUMMARY:** Pursuant to § 102(2)(C) of the National Environmental Policy Act (NEPA) of 1969, as amended, the Bureau of Reclamation (Reclamation) will prepare a draft environmental impact statement (EIS) on the proposed renewal of long-term water service contracts for the following irrigation districts in the Republican River basin (Basin) in Nebraska and Kansas: Frenchman-Cambridge, Frenchman Valley, Bostwick Irrigation District in Nebraska, and Kansas Bostwick No.2. Existing water service contracts begin to expire in December of 1996.

The purpose of this action is to provide for the continued beneficial use of Federally developed water within the Basin. Reclamation is proposing to renew long-term water service contracts for the four irrigation districts in accordance with current law and policy while examining all reasonable alternatives to balance contemporary surface water needs within the Basin.

Reclamation has scheduled a series of public information/scoping meetings in connection with the development of the draft EIS. These meetings have been scheduled to inform the public of the status of contract renewal, to allow for public comment on the preliminary management scenarios being evaluated in the draft Resource Management Assessment (RMA) process, to inform the public of significant issues identified to date, to identify additional significant issues that should be analyzed in the draft EIS, and to identify issues related to Indian trust assets. A draft EIS is expected to be completed and available for review and comment early in 1997.

**DATES:** The schedule for the scoping meetings is:

March 18, 7:00 p.m., Belleville, KS, Armory Building
March 19, 2:00 p.m., Manhattan, KS, Pottorf Hall in Cico Park
March 20, 2:00 p.m., Lincoln, NE, Quality Inn at the Airport
March 21, 7:00 p.m., Superior, NE, Superior High School
March 27, 7:00 p.m., McCook, NE, Fairgrounds Community Building
March 28, 7:00 p.m., Alma, NE, Alma Public School

**FOR FURTHER INFORMATION CONTACT:** Ms. Jill Manring, Natural Resource Specialist, Bureau of Reclamation, Nebraska-Kansas Area Office, Post Office Box 1607, Grand Island, Nebraska 68802–1607; Telephone: (308) 389–4557.

**SUPPLEMENTARY INFORMATION:** Reclamation constructed Bonny, Lovewell, and Enders reservoirs and Hugh Butler, Harry Strunk, and

Swanson lakes in the Basin in the 1940's and 1950's pursuant to the Pick-Sloan Missouri Basin Program of the Flood Control Act of 1944. During this same period, the Corps of Engineers constructed Harlan County Lake and Milford Reservoir on the Republican River pursuant to the same authority. Only Milford Reservoir near the confluence of the Republican and Kansas rivers has no storage allocated to irrigation.

Prior to initiating construction on the individual projects, Reclamation negotiated and entered into long-term water service contracts with the irrigation districts. The initial long-term water service contracts were issued for 40-year terms, became effective upon completion of the respective projects, and began to expire in December of 1996.

The location of the reservoirs and irrigation districts within a common watershed and similar expiration dates for the water service contracts provided Reclamation an opportunity to evaluate the direct, indirect, and cumulative effects of long-term water service contract renewal from a watershed perspective. Reclamation initiated its watershed analysis by preparing the RMA to identify water-related resources within the Basin, document their historic and existing conditions, identify resource trends and/or predict future conditions, propose goals and objectives for resource management, and provide a framework for development of the range of alternatives necessary for the comprehensive EIS. Much of the information gathered for, and incorporated into, the RMA will be used to prepare the draft EIS.

Prior to beginning the RMA, Reclamation held seven public information meetings in Nebraska and Kansas in March of 1995 to disseminate information about the environmental compliance and contract renewal processes and to identify existing sources of information, data gaps, and issues. Information obtained at these meetings helped identify concerns about resource management in the Basin, Indian trust assets, and data gaps which must be addressed during the NEPA compliance process.

An extensive range of management scenarios will be formulated for the RMA that are unconstrained by existing law or regulation. The initial range of management scenarios includes over 40 options and varies from no change from current management to optimizing deliveries of water for irrigation at the expense of other beneficial uses to optimizing reservoir management for fisheries and recreation at the expense of irrigation to restoring the natural hydrograph to the degree possible under constraint of reduced base flows. All of the preliminary management scenarios will be evaluated in the RMA process through hydrologic modeling and other techniques to identify those scenarios which are considered feasible. It should be recognized that some of the management scenarios ultimately identified in the RMA may include actions beyond Reclamation's authority to implement. The RMA process will conclude with the identification of resource management goals and objectives and a broad range of feasible management scenarios. Further screening and evaluation during the environmental compliance process will produce an ultimate range of reasonable alternatives that will be considered and evaluated in detail in the EIS. Both the RMA and EIS will assess potential impacts to Indian trust assets.

A special edition of the *Republican River Roundup*, a public information newsletter, is available from Ms. Judy O'Sullivan at the above address. The special edition of the newsletter includes an abstract of the draft RMA, information concerning management scenarios under consideration, and sample graphs and tables found in the RMA. The draft RMA is expected to be completed and available for review and comment at the scoping meetings or from Ms. O'Sullivan in late March. A draft EIS is expected to be completed and available for review and comment early in 1997.

Anyone interested in additional information concerning the environmental compliance or water service contract renewal processes, having suggestions regarding significant environmental issues, or having input about concerns or issues related to Indian trust assets should contact Ms. Manring at the above address.

Dated: February 23, 1996.

Neil Stessman,

*Regional Director.*

[FR Doc. 96–4670 Filed 2–28–96; 8:45 am]

BILLING CODE 4310–94–P

## DEPARTMENT OF JUSTICE

### Antitrust Division

### Notice Pursuant to the National Cooperative Research and Production Act of 1993—Corporation for Open Systems International

Notice is hereby given that, on June 21, 1995, pursuant to Section 6(a) of the National Cooperative Research and Production Act of 1993, 15 U.S.C. 4301 *et seq.* (''the Act''), Corporation for Open Systems International (''COS'') has filed written notifications simultaneously with the Attorney General and the Federal Trade Commission reflecting changes in certain existing COS Executive Interest Groups (''EIGS'') and the termination of an EIG. The notifications were filed for the purpose of extending the Act's provisions limiting the recovery of antitrust plaintiffs to actual damages under specified circumstances. There are changes in three EIGS. First, the changes in the organizations participating in SONET Interoperability Forum (''The Forum''), an existing COS EIG, are as follows: Motorola, Inc., currently a COS member, became a member of The Forum, effective March 31, 1995; SunSoft, a division of Sun Microsystems, Mountain View, CA, became an Associate of The forum, effective May 17, 1995; Retix, an Associate of the Forum, transferred its membership to its subsidiary, Telegenics, Santa Monica, CA, effective April 19, 1995. Second, AT&T, a current COS member, became a member of Digital Video Home Terminal DVHT EIG, effective April 16, 1995. Third, the X.500 Integration Pilot Project, which was a COS EIG, was completed and terminated effective March 31, 1995.

No other changes have been made in either the membership or planned activity of COS. Membership in COS remains open, and COS intends to file additional written notifications disclosing all changes in membership.

On May 14, 1986, COS filed its original notification pursuant to Section 6(a) of the Act. The Department of Justice published a notice in the Federal Register pursuant to Section 6(b) of the Act on June 11, 1986 (51 FR 21260).

The last notification was filed with the Department on March 31, 1995. A notice was published in the Federal Register pursuant to Section 6(b) of the Act on June 28, 1995 (60 FR 33431).

Constance K. Robinson,

*Director of Operations, Antitrust Division.*

[FR Doc. 96–4655 Filed 2–28–96; 8:45 am]

BILLING CODE 4410–01–M

### Notice Pursuant to the National Cooperative Research and Production Act of 1993—Joint Industry Underwater Welding Research and Development Program

Notice is hereby given that, on July 11, 1995, pursuant to Section 6(a) of the National Cooperative Research and Production Act of 1993, 15 U.S.C. § 4301 *et seq.* (''the Act''), Global Industries, Ltd. has filed written

notifications simultaneously with the Attorney General and the Federal Trade Commission disclosing a change in its membership. The notifications were filed for the purpose of extending the Act's provisions limiting the recovery of antitrust plaintiffs to actual damages under specified circumstances. Specifically, Exxon Production Research Company, Houston, TX has become a party to the group research project.

No other changes have been made in either the membership or planned activity of the group research project. Membership in this group research project remains open, and Global Industries, Ltd. intends to file additional written notifications disclosing all changes in membership.

On January 25, 1993, Global Industries, Ltd. filed its original notification pursuant to Section 6(a) of the Act. The Department of Justice published a notice in the Federal Register pursuant to Section 6(b) of the Act on March 9, 1993 (58 FR 13091).

The last notification was filed with the Department on October 26, 1993. A notice was published in the Federal Register pursuant to Section 6(b) of the Act on December 28, 1993 (58 FR 68663).

Constance K. Robinson,

*Director of Operations, Antitrust Division.*

[FR Doc. 96–4656 Filed 2–28–96; 8:45 am]

**BILLING CODE 4410–01–M**

## Notice Pursuant to the National Cooperative Research and Production Act of 1993—Mid Atlantic Regional Consortium for Advanced Vehicles (MARCAV)

Notice is hereby given that, on July 24, 1995, pursuant to Section 6(a) of the National Cooperative Research and Production Act of 1993, 15 U.S.C. § 4301 *et seq.* ''the Act''), the Participants in the Mid Atlantic Regional Consortium for Advanced Vehicles (''MARCAV'') have filed written notifications simultaneously with the Attorney General and the Federal Trade Commission disclosing: (1) the identities of the parties to MARCAV; and (2) the nature and objectives of the venture. The notifications were filed for the purpose of invoking the Act's provisions limiting the recovery of antitrust plaintiffs to actual damages under specified circumstances. Pursuant to Section 6(b) of the Act, the identities of the current parties participating in MARCAV are: Concurrent Technologies Corporation, Johnstown, PA; Ergenics, Inc., Ringwood, NJ; Keystone Consortium, Allentown, PA; Sigma Labs, Inc., Tucson, AZ; Synkinetics, Inc., Bedford, MA; and United Defense LP, Santa Clara, CA.

The nature and objectives of this venture include the pursuit of research and development of electronic hybrid vehicles to address military missions, functions and requirements. It will also provide direct commercial applications for an increasingly significant technology area with great market potential both in the United States and abroad. This effort will assist defense-dependent companies to diversify their work and encourage economic development in an advanced technology area. It will improve air quality through reduction of conventional vehicle pollution and increase the options of transportation planners. The areas of technology research and development will include: (1) composite vehicle manufacturing; (2) advanced drive train components; (3) energy management systems; (4) advanced energy storage; (5) advanced motor controllers; (6) efficient battery charging; and (7) crash-test simulation and verification. The purpose of the MARCAV venture does not include the production of a product, process or service as referred to in 15 U.S.C. § 4301(a)(6)(D).

Information regarding participation in this venture may be obtained from Marion Walthall, Concurrent Technologies Corporation, 1450 Scalp Avenue, Johnstown, PA 15904.

Constance K. Robinson,

*Director of Operations, Antitrust Division.*

[FR Doc. 96–4653 Filed 2–28–96; 8:45 am]

**BILLING CODE 4410–01–M**

## Notice Pursuant to the National Cooperative Research and Production Act of 1993—Petroleum Environmental Research Forum Project 94–07

Notice is hereby given that, on January 29, 1996, pursuant to Section 6(a) of the National Cooperative Research and Production Act of 1993, 15 U.S.C. 4301 *et seq.* (''the Act''), Petroleum Environmental Research Forum (''PERF'') Project No. 94–07, titled ''E&P Cooperative Program: Soils/Sediments/Sludges'', has filed written notifications simultaneously with the Attorney General and the Federal Trade Commission disclosing (1) the identities of the parties and (2) the nature and objectives of the venture. The notifications were filed for the purpose of invoking the Act's provisions limiting the recovery of antitrust plaintiffs to actual damages under specified circumstances. Pursuant to Section 6(b) of the Act, the identities of the parties are: Amoco Exploration & Production Technology Group, Tulsa, OK; Chevron Research and Technology Co., Richmond, CA; Phillips Petroleum Company, Bartlesville, OK; and Texaco Inc., Bellaire, TX. The general area of planned activity is to develop, apply and transfer technology and information which will assist in cost-effective management of soils, sediments and sludges in Exploration and Production Operations.

Participation in this venture will remain open to any and all interested parties until the date upon which work on the program has been completed and a final written report summarizing each of the projects has been provided to the participants. This is anticipated to occur approximately twenty-four (24) months after the Project commences. The participants intend to file additional written notifications disclosing all changes in its memberships.

Constance K. Robinson,

*Director of Operations, Antitrust Division.*

[FR Doc. 96–4654 Filed 2–28–96; 8:45 am]

**BILLING CODE 4410–01–M**

## Notice Pursuant to the National Cooperative Research and Production Act of 1993—Rapid Object Application Development Consortium

Notice is hereby given that, on July 14, 1995, pursuant to Section 6(a) of the National Cooperative Research and Production Act of 1993, 15 U.S.C. 4301 *et seq.* (''the Act''), the Rapid Object Application Development Consortium has filed written notifications simultaneously with the Attorney General and the Federal Trade Commission disclosing (1) the identities of the parties and (2) the nature and objectives of the Consortium. The notifications were filed for the purpose of invoking the Act's provisions limiting the recovery of antitrust plaintiffs to actual damages under specified circumstances. Pursuant to Section 6(b) of the Act, the identities of the parties are: Andersen Consulting LLP, Chicago, IL; Raytheon Company, Lexington, MA; CoGenTex Inc., Ithaca, NY; and Expersoft Corporation, San Diego, CA.

The purpose of the Consortium is to design, develop, and demonstrate architecture, tools and applications in the area of distributed object-oriented software systems, pursuant to a Cooperative Agreement with the Advanced Research Project Agency

Technology Reinvestment Project administered by Rome Laboratory.

Constance K. Robinson,

*Director of Operations, Antitrust Division.*

[FR Doc. 96–4659 Filed 2–28–96; 8:45 am]

BILLING CODE 4410–01–M

## Notice Pursuant to the National Cooperative Research and Production Act of 1993—Seamless High Off-Chip Connectivity Consortium

Notice is hereby given that, on December 19, 1995, pursuant to Section 6(a) of the National Cooperative Research and Production Act of 1993, 15 U.S.C. 4301 *et seq.* (''the Act''), the Seamless High Off-Chip Connectivity Consortium (''SHOCCC'') has filed written notifications simultaneously with the Attorney General and the Federal Trade Commission disclosing (1) the identities of the parties and (2) the nature and objectives of the venture. The notifications were filed for the purpose of invoking the Act's provisions limiting the recovery of antitrust plaintiffs to actual damages under specified circumstances. Pursuant to Section 6(b) of the Act, the identities of the parties are: Cray Research, Inc., Eagan, MN; The Dow Chemical Company, Midland, MI; and Integrated Device Technology, San Jose, CA. The general areas of planned activity for SHOCCC are research and development with the intent of developing and assessing the cost and performance of materials and process technologies for the parallel manufacture of digital electronic systems having multiple active integrated circuit devices interconnected by high-performance passive structures.

Constance K. Robinson,

*Director of Operations, Antitrust Division.*

[FR Doc. 96–4652 Filed 2–28–96; 8:45 am]

BILLING CODE 4410–01–M

## Notice Pursuant to the National Cooperative Research and Production Act of 1993—Trico Steel Company, L.L.C.: Construction and Operation of a Flat Rolled Steel Minimill

Notice is hereby given that, on July 18, 1995, pursuant to Section 6(a) of the National Cooperative Research and Production Act of 1993, 15 U.S.C. 4301 *et seq.* (''the Act''), the parties to a cooperative production venture relating to the construction and operation of a flat rolled steel minimill have filed written notifications simultaneously with the Attorney General and the Federal Trade Commission disclosing (1) the identities of the parties and (2) the nature and objectives of the project. The notifications were filed for the purpose of invoking the Act's provisions limiting the recovery of antitrust plaintiffs to actual damages under specified circumstances. Pursuant to Section 6(b) of the Act, the identities of the parties are: LTV-Trico, Inc., Cleveland, OH (controlled by the LTV Corporation, Cleveland, OH); SMI-Trico, Inc., Wilmington, DE (controlled by Sumitomo Metal Industries, Ltd., Tokyo, JAPAN); and British Steel Trico Holdings, Inc., Wilmington, DE (controlled by British Steel plc., London, ENGLAND). The nature and objectives of the venture are to design, finance, construct and operate in Decatur, Alabama a flat rolled steel minimill with the capacity to produce approximately 2.2 million tons annually of hot-rolled steel coils. The joint venture products will be sold to a separate entity owned by the LTV Corporation and will be sold by that entity to steel service centers and tubular converters, as well as to the automotive, construction and general manufacturing industries. The joint venture will utilize state of the art technology to produce hot-rolled, light gauge products that will compete against hot-rolled steel sheet and strip, tin and plate products and certain cold-rolled sheet products. Major components of the plant will include electric furnaces, thin slab casters and a hot-strip rolling mill.

Constance K. Robinson,

*Director of Operations Antitrust Division.*

[FR Doc. 96–4658 Filed 2–28–96; 8:45 am]

BILLING CODE 4410–01–M

## DEPARTMENT OF LABOR

### Office of the Secretary

### Job Training Partnership Act (JTPA), Title IV-D, Demonstration Program: Nontraditional Employment for Women (NEW) for Fiscal Year 1995 (Now Being Completed in Fiscal Year 1996)

**AGENCY:** Women's Bureau, U.S. Department of Labor.

**ACTION:** Notice of Availability of Funds and Solicitation for Grant Applications (SGA 96–01).

**SUMMARY:** All information required to submit a proposal is contained in this announcement. All applicants for grant funds should read this notice in its entirety. The Women's Bureau (Washington, D.C.), U.S. Department of Labor (USDOL), announces a grant competition for demonstration program authorized under the Nontraditional Employment for Women (NEW) Act funded through Job Training Partnership Act (JTPA), Title IV–D funds administered by the Employment and Training Administration. The NEW Act amends the Job Training Partnership Act (JTPA) and is incorporated into the subsequent Job Training Reform Amendments of 1992. With the Solicitation for Grant Applications (SGA) 96–01, the Women's Bureau expects to award grants to six States, the maximum allowed by the NEW legislation.

This notice describes the background, the application process, statement of work, evaluation criteria, and reporting requirements for Solicitation for Grant Applications (SGA 96–01). WB anticipates that up to a total amount of $1.5 million will be available for the support of all grants using demonstration funding.

**DATES:** One (1) ink-signed original, complete grant application (plus five (5) copies of the Technical Proposal and three (3) copies of the Cost Proposal shall be submitted to the U.S. Department of Labor, Office of Procurement Services, Room N–5416, 200 Constitution Avenue, N.W., Washington, D.C. 20210, not later than 4:45 p.m., Eastern Daylight Saving Time, April 26, 1996, or be postmarked by the U.S. Postal Service on or before that date. Hand delivered applications must be received by the Office of Procurement Services by that time.

**ADDRESSES:** Applications shall be mailed to the U.S. Department of Labor, Office of Procurement Services, Attention: Lisa Harvey, Reference SGA 96–01, Room N–5416, 200 Constitution Avenue, N.W., Washington, D.C. 20210.

**FOR FURTHER INFORMATION CONTACT:** Lisa Harvey, Office of Procurement Services, Telephone (202) 219–6445 [not a toll-free number]

**SUPPLEMENTARY INFORMATION:** This announcement consists of five parts: Part I describes the background and purpose of the demonstration program and identifies demonstration policy and topics. Part II describes the application process and provides detailed guidelines for use in applying for demonstration grants. Part III includes the Statement of Work for the demonstration projects. Part IV identifies and defines the evaluation criteria to be used in reviewing and evaluating applications. Part V describes the deliverables and reporting requirements.

Part I. Background

*A. The Women's Bureau*

The WB will provide the policy leadership in this project. Improving women's employment opportunities and other employment related equity and social issues has been the driving force of the Women's Bureau since its inception in 1920. Within the Department of Labor, the Director serves as the policy advisor on women's issues to the Secretary and other DOL agencies charged with improving the economic and worklife of American workers.

The Women's Bureau identifies nontraditional occupations as good jobs, characterized by employment growth, employee benefits relative to the local economic conditions. Such jobs include health and pension benefits, above average earnings that can provide self-sufficiency for women and their families. Statistically, nontraditional occupations (NTOs) is one in which less than 25 percent of the persons employed in an occupational group are women. Further, NTOs include a broad array of skilled technical and computer-based occupations in manufacturing, transportation, public utilities and communications industries, as well as the apprenticeable skilled trades in the building and construction industry.

*B. NEW Policy*

WB has a history of promoting the recruitment, retention and promotion of women in nontraditional jobs. The Bureau encourages women to CONSIDER the wide array of occupations nontraditional to women as a way of becoming self-sufficient. These occupations include skilled, blue-collar trades, technical jobs in the business service, health care, telecommunications, and public utilities among other good jobs where women are underrepresented. These are industries projected to have above average growth into the 21st Century and to pay a living wage with benefits.

The NEW Act exemplary demonstration program funding must develop and/or supplement, not supplant funding already in place to train, place, or support the movement of women in nontraditional employment. Grant funds must not be used as ''replacement'' funds for activities that are currently funded through other Federal programs, such as other JTPA titles, the Carl D. Perkins Vocational and Applied Technology Education Act, etc. Therefore, NEW Act grant funds can be used in addition to, but not instead of, other Federal funds to expand or enhance programs.

The NEW Act provisions encourage efforts by the Federal, State, and local levels of government aimed at providing a wider range of opportunities for women under the JTPA; to provide incentives to establish programs that will train, place, and retain women in nontraditional fields; and to facilitate coordination between the JTPA and the Carl D. Perkins Vocational and Applied Technology Education Act to maximize the effectiveness of resources available for training and placing women in nontraditional employment.

The NEW Act demonstration program grant awards are funded under JTPA Title IV–D. The funding is set at $1.5 million, annually, to make up to six (6) awards for fiscal years 1992, 1993, 1994, and 1995 (with the current Solicitation for Grant Applications).

*C. NEW Authorities*

The grants were first authorized under the Nontraditional Employment for Women (NEW) Act, Public Law 102–235, signed December 1991, effective July 1992. The NEW Act amends the Job Training Partnership Act (JTPA) and is incorporated into the subsequent Job Training Reform Amendments of 1992. Further, under an intra-agency agreement, the Employment and Training Administration (ETA) and the Women's Bureau (WB) jointly administer the NEW Act, with the Women's Bureau having responsibility for the implementation of the demonstration program grants to States' provisions.

*D. Purpose of the NEW Demonstration Grants*

In the fourth and final year of competitive NEW Act grants, the Department expects States to use NEW Act funds to continue and expand its activities to make JTPA more responsive to women in a broad array of occupations nontraditional to women by focusing on the JTPA system and its training and placement programs under Title II–A. Along with seeking geographic and race-ethnic diversity in program participants over the four years of the NEW demonstration program, the NEW legislation requires that the USDOL also consider how programs reflect in making the NEW demonstration proposed program grant awards:

(1) the level of coordination between the JTPA and other resources available for training women in nontraditional employment, i.e., Carl D. Perkins Vocational and Applied Technology Education Act, Intermodal Surface Transportation Efficiency Act (ISTEA), Department of Housing and Urban Development, etc., and other Federal, State and local job training resources;

(2) the extent of private sector involvement in the development and implementation of training programs under the JTPA;

(3) the extent to which the initiatives proposed by a State supplement or build upon existing efforts in a State to train and place women in nontraditional employment;

(4) the extent to which a State is prepared to disseminate information on its demonstration training programs, and

(5) the extent to which a State is prepared to produce materials that allow for replication of such State's demonstration training program.

Part II. Application Process

*A. Eligible Applicants*

The State is the eligible applicant for a NEW demonstration grant award. The Governor of each State, as is the case with JTPA Titles II and III, is the recipient of awards under the NEW Act. Governors in turn designate an agency at the State level to administer JTPA for the State; that agency can apply for the NEW grants on behalf of the Governor and the State. The criteria for what States can do with the funds to implement the NEW demonstration grants, i.e., subgrants is as prescribed in the NEW Act and follows.

States receiving grants under this demonstration program may use such funds to:

- award grants to service providers in the State to design and implement programs that train and otherwise prepare women for nontraditional employment. States choosing to award funds directly to service providers may only award grants to community-based organizations, educational institutions, or other service providers that have demonstrated success in occupational skills training; and
- award grants to (1) service delivery areas (SDAs) that plan and demonstrate the ability to train, place and retain women in nontraditional employment or to (2) service delivery areas on the basis of exceptional past performance in training, placing and retaining women in nontraditional employment. The State must also ensure, when awarding grants to service delivery areas on the basis of prior exceptional performance, that such prior success is not attributable or related to the activities of a service provider receiving funds directly from the State, as described in the previous paragraph. For example, the State may not award funds to SDA 5 on the basis of its program having an

85 percent placement rate if the program was actually conducted by a community-based organization, and the placement rate is a result of exceptional job development on the CBO's part, and the CBO has received funds under this grant.

States and their subgrantees/subcontractors have the option of retaining up to 10 percent of NEW grant funds to pay for administrative costs associated with the demonstration (including travel), assist and/or facilitate coordination to statewide approaches, or provide technical assistance to service providers. The 10 percent limitation on administrative costs is prescribed in the NEW Act itself and cannot be changed by the Department. Administrative costs are defined in the Final Rule for the JTPA, 20 CFR Part 626, et al., see 627.440(d)(5) Administration. (As published in the Federal Register on Tuesday, December 29, 1992, Vol. 57, No. 250, Page 62041). Note the provision in Section K, below, which states if the total administrative costs exceed 10% of the grant proposal, the proposal will be considered non-responsive.

*B. Contents*

To be considered *responsive* to the Solicitation for Grant Applications (SGA), the application must consist of the following separate sections. *ANY PROPOSALS THAT DO NOT CONFORM TO THESE STANDARDS MAY BE DEEMED NON-RESPONSIVE TO THIS SGA AND WILL NOT BE EVALUATED.*

To be considered responsive to the Solicitation for Grant Applications (SGA), each application must consist of and follow the order of the sections listed in Part III of this solicitation. The applicant must also include information which the applicant believes will address the selection criteria identified in Part IV. Technical proposals shall not exceed 25 single sided, double spaced, 10 to 12 pitch typed pages (not including attachments). Any proposals that do not conform to these standards shall be deemed nonresponsive to this SGA and will not be evaluated.

To facilitate proposal evaluation, the applicant shall submit *separate* sections entitled ''Technical Proposal'' and ''Business Proposal'' (one original and five copies of the Technical Proposal and one original and two copies of the Business Proposal). These sections *must* be physically separate (i.e., the Business Proposal must start on a new page).

1. Technical Proposal

Each proposal shall include (a) a two (2) page abstract which summarizes the proposal and makes clear how the proposed project will improve JTPA-sponsored programs to be more responsive to women in nontraditional training and placement, including responses to items 1–5 under Part III, Section B; and (b) a full description of the State's proposed project for an exemplary demonstration project to train and place women in nontraditional occupations; how it fits with the State's JTPA Title II–A training and placement; and how the project will provide for capacity building to make the State's JTPA system more responsive to women in nontraditional activities after the proposed NEW Project funding is complete. No cost data or reference to price shall be included in the technical proposal.

2. Cost Proposal

The cost (business) proposal must be separate from the technical proposal. The transmittal letter, all letters of support, and public policy certificates shall be attached to the business proposal, which shall consist of the following:

a. *Standard Form 424*: Application for Federal Assistance, signed by an official from the applicant organization who is authorized to enter the organization into a grant agreement with the Department of Labor.

b. *Budget Information*: Budget Information must consist of the following: ''Budget Information,'' Sections A–F of Standard Budget Form 424A. (Use the forms and instructions provided, with the following qualifications)

(1) In Section A, Budget Summary, enter in column (e), the amount of Federal funds applied for; enter in column (f) the total value of any match/in-kind contributions. Provide totals in column (g) and row 5.

(2) In Section B, Budget Categories, enter detailed separate cost breakdowns for both the amount of Federal funds requested in the grant application (entered in column 1) and the total amount of in-kind services and/or matching funds that shall be made available (column 2). Column (3) line i, enter the grantee and subgrantee direct administrative cost. Subgrantee/subcontractor and grantee indirect administrative costs must be entered in Column (3) line j. Line (k), Column 3 represents the total Federal dollars to support administrative charges to the grant project. This total cannot exceed 10% of total Federal dollars requested. Any grant proposal which exceeds the 10% maximum (or which does not report administrative costs in Column 3) will be considered *non-responsive* and will not be evaluated. Although administrative costs charged to the Department are limited, there is no limitation for administrative charges supported with matching funds. Matching resources can be used to support the complete range of activities allowed under this legislation. (See JTPA Final Rule, 20 CFR Part 626 et al., at 627.440(d)(5) as referenced on Page 7 of Part I for allowable administrative costs). The grantee must ensure that all administrative costs, grantee and subgrantee, are clearly indicated on the budget back-up (See paragraph C of this Section.)

The object class category entitled ''j. Indirect Charges'' shall not be used when it is proper and appropriate to direct charge costs relating to the program. The indirect charges object class category is properly used to display costs based on (a) an approved, negotiated indirect cost rate with either the Department of Labor (DOL) or another cognizant Federal Government audit agency; or (b) a proposed rate based on a cost allocation plan that might be used as a 90-day billing rate for the grant award until the grantee can negotiate an acceptable and allowable rate with the Office of Cost Determination of DOL.

It is not required that project functions or activities within the proposed project be listed in separate columns of Section B, unless the functions or activities are disparate.

Note that the total requested in Column 5 will always be the sum of Columns 1 and 2 only, as Column 3 represents the administrative portion of Column 1 funds.

(3) In Section C, Non-Federal Resources, enter the amounts of proposed matching funds and/or in-kind contributions from each source, Federal and non-Federal. Specify the sources. Provisions governing the allowability and valuation of in-kind contributions are contained in 29 CFR Part 97 for State and local governments, all others see 29 CFR Part 95.

(4) In Section D, Forecasted Cash Needs, provide a non-cumulative breakout of projected expenditures for each quarter for both the Federal funds (line 13) and the Match/In Kind funds (line 14), along with Totals (line 15).

c. *Budget Back-up Information*: As an attachment to the Standard Budget Forms, the applicant must provide at a minimum, and on separate sheet(s), program/administrative costs which include the following information (applicants are encouraged to use the attached budget back-up format that provides for display of all the required information):

(1) A breakout of all personnel costs by position title, salary rates and percent of time of each position to be devoted to the proposed project;

(2) An explanation and breakout of extraordinary fringe benefit rates and associated charges (i.e., rates exceeding 35% of salaries and wages);

(3) An explanation of the purpose and composition of, and method used to derive the costs of each of the following: travel, equipment, supplies, sub-agreements and any other costs. The applicant shall include costs of any required travel described in the attached Special Provisions. Mileage charges shall not exceed *30* cents per mile.

(4) Description/specification of and justification for equipment purchases, if any. Any non-expendable personal property having a unit acquisition cost of $500 or more, and a useful life of two or more years must be specifically identified (State and local governments see 29 CFR Part 97, all others see 29 CFR Part 95).

(5) Identification of all sources of matching funds and explanation of the derivation of the value of matching/in-kind services. For instance, in-kind contributions may result from the required program coordination with JTPA and other resources or, in the delivery of services, where existing programs are being utilized to complement and supplement the demonstration program.

Applicants are advised that information and dollar amounts provided in the budget back-up must be consistent with and therefore, easily cross-walked to Section B, Object Class Category, of the Standard Budget Forms. They should also be consistent with the budget narrative contained in the application.

d. *Budget Narrative*:

(1) A narrative explanation of the budget which describes all proposed costs and indicates how they are related to the operation of the project.

(2) This shall include, at a minimum, an identification of staff associated with the program and a description of their duties relative to the program. The description shall justify the percentages of staff time being charged to the grant.

(3) Travel, equipment, supplies, contractual (including subgrants), and other charges in the budget shall be explained and justified with respect to the project approach.

(4) Provide this information separately for the amount of requested Federal funding and the amount of proposed match/in-kind contribution.

e. *Indirect Cost Information*: If indirect charges are claimed in the proposed budget, the applicant must provide on a separate sheet, the following information:

(1) Name and address of cognizant Federal audit agency;

(2) Name, address and phone number (including area code) of the Government auditor;

(3) Documentation from the cognizant agency indicating:

(a) Indirect cost rate and the base against which the rate should be applied;

(b) Effective period (dates) for the rate;

(c) Date last rate was computed and negotiated;

(4) If no government audit agency computed and authorized the rate claimed, provide brief explanation of computation, who computed and the date; if the applicant is awarded a grant, the proposed indirect rate must be submitted to a Federal audit agency within 90 days of award for approval.

*C. Funding Levels*

The Department expects to make six awards to States, the maximum allowed under the NEW Act. Proposal (*i.e.*, grant application) funding requests should average $250,000.

*D. Length of Grant and Grant Awards*

The initial performance period for the grants awarded under this SGA shall be for eighteen (18) months of program performance, with the option to extend for up to three months as a no cost extension to complete final reports. Each applicant shall reflect in their application the intention to begin operation no later than June 1996.

*E. Submission*

One (1) ink-signed original, complete grant application (plus five (5) copies of the Technical Proposal and two (2) copies of the Business Proposal) shall be submitted to the U.S. Department of Labor, Office of Procurement Services, Room N–5416, 200 Constitution Avenue, N.W., Washington, D.C. 20210, not later than 4:45 pm EDT, April 26, 1996. Hand delivered applications must be received by the Office of Procurement Services by that time.

Any application received at the Office of Procurement Services after 4:45 pm EDT will not be considered unless it is received before award is made and:

1. It was sent by registered or certified mail not later than April 21, 1996;

2. It is determined by the Government that the late receipt was due solely to mishandling by the Government after receipt at the U.S. Department of Labor at the above address; or

3. It was sent by U.S. Postal Service Express Mail Next Day Service-Post Office to Addressee, not later than 5:00 pm at the place of mailing April 24, 1996.

The only acceptable evidence to establish the date of mailing of a late application sent by registered or certified mail is the U.S. Postal Service postmark on the envelope or wrapper and on the original receipt from the U.S. Postal Service. If the postmark is not legible, an application received after the above closing time and date shall be processed as if mailed late. ''Postmark'' means a printed, stamped or otherwise placed impression (*not* a postage meter machine impression) that is readily identifiable without further action as having been applied and affixed by an employee of the U.S. Postal Service on the date of mailing. Therefore, applicants shall request that the postal clerk place a legible hand cancellation bull's-eye postmark on both the receipt and the wrapper or envelope.

The only acceptable evidence to establish the date of mailing of a late application sent by U.S. Postal Service Mail Next Day Service-Post Office to Addressee is the date entered by the post office receiving clerk on the ''Express Mail Next Day Service-Post Office to Addressee'' label and the postmark on the envelope or wrapper and on the original receipt from the U.S. Postal Service. ''Postmark'' has the same meaning as defined above. Therefore, applicants shall request that the postal clerk place a legible hand cancellation bull's-eye postmark on both the receipt and the envelope or wrapper.

The only acceptable evidence to establish the time of receipt at the U.S. Department of Labor is the date/time stamp of the Office of Procurement Services on the application wrapper or other documentary evidence of receipt maintained by that office.

Applications sent by telegram or facsimile (FAX) will *not* be accepted.

Part III. Statement of Work—Key Features

*A. Introduction—Program Focus*

State applicants are encouraged to submit proposals to provide technical assistance and program development to cause and sustain systemic change in their JTPA system: (1) to build the capacity of JTPA systems to promote and provide training and placement nontraditional for women in JTPA and; (2) to develop new initiatives or supplement existing exemplary training and placement programs that are responsive to the needs of JTPA-eligible women in nontraditional occupations (NTOs) training and placement. Special consideration will be given to programs modeled on the contextual or integrated

learning concept incorporated in JTPA Title II–A training and placement. Skill training activities should have the support of JTPA Title II–A training funds in addition to NEW Act demonstration program grant funding.

Moreover, the USDOL is seeking States with proposals that build on and/or support demonstrated experience in the following areas:

—provide evidence of demonstrated experience and commitment to the goals and objectives of the NEW Act since its implementation in 1992;

—provide evidence of the use of technical assistance to build the capacity of their JTPA system to institutionalize exemplary nontraditional training and placement to JTPA-eligible women in whatever employment and training process emerges, i.e., One-Stop Career Centers, Workforce Development Centers, etc.;

—provide evidence of implementing systemic change in JTPA service delivery to increase the participation of women in nontraditional occupations (NTOs) training and placement;

—provide evidence of cooperation and coordination of programs/services to support JTPA-eligible women in nontraditional occupational training and placement;

In addition, in awarding NEW grants, the Department of Labor will give priority consideration to States with JTPA systems that have both (1) established goals of 15 percent or more for training and placing women in a broader range of JTPA training and placement of women in nontraditional occupations (NTOs) and (2) where there is an increase of JTPA-eligible women in NTOs since the implementation of NEW in July 1992 that has measured more than 25 percent over the July 1992–July 1995 (or most recent) period. The activities of JTPA systems that reflect such leadership goals and results can provide guidance to the JTPA system nationwide, as well as the employment and training community, more generally.

In addition to the following specifications, please read Part I Background, Section D ''Purpose of NEW Demonstration Grants'' for a full consideration of the USDOL's program expectations for making NEW grant awards.

*B. Program Design—Key Features*

To be fully responsive to this SGA, proposal submission should address the following issues in the introduction and summary of the proposal for this SGA:

1. A concise and direct statement, including statistical outcomes, of the goals and objectives for the State's JTPA system and its commitment to training and placing JTPA-eligible women in nontraditional occupations (NTOs) from its Governor's Coordination and Special Services Program (GCSSP). *Priority consideration will be given to State proposals with statewide statistical goals of 15 percent or more and a 25 percent increase over the July 1992–1995.*

2. A statistical table of women in JTPA nontraditional training and placement, 1992–1993—numbers and as a percent of total training and placement and as a percent of women's training and placement. *Priority consideration will be given to State proposals that also cross tabulate the training and placement data by occupation, industry, and wages data.*

3. A concise and direct statement on how the proposed activities will broaden the range of training and placement of women in the JTPA system.

4. A concise and direct statement on how proposed activities will empower the JTPA system to institutionalize strategies to support women in nontraditional training and placement.

5. The State proposal's program design focuses on which of the following:

* * * A new initiative building on other State NEW- specific activities;

* * * An expansion or supplement to ongoing State NEW-specific activities;

* * * Largely client focus on training and placement;

* * * Largely provides for JTPA capacity building;

Each of the design features below should be clearly identified by using the feature identifier as a ''side head'' above the description (i.e., see *State* Involvement., below) in its proposal submission for a NEW Demonstration Program:

1. *State's Involvement.* The Bureau expects the State to be an active participant in the development of the proposed program activities and in the implementation of the demonstration program once a grant has been awarded. Therefore, applicants should describe the activities conducted by the State, whether through the State JTPA liaison, the State JTPA agency, or both, for proposal development and program implementation and how the proposal is expected to impact—not only to enhance and/or expand its nontraditional training and employment opportunities for JTPA-eligible women under an existing JTPA program, but to provide technical assistance to provide capacity building to cause systemic change in the State JTPA service delivery to women in nontraditional training and placement.

2. *Private Sector Involvement.* The extent of private sector involvement in the development and implementation of training programs under the JTPA could include, but are not limited to, the following activities: joint ventures in skill training and the development of effective and efficient administrative and management skills; industry instructors for classroom and/or integrated or contextual learning programs to increase the training and placement of JTPA-eligible women in nontraditional careers. Also see *Linkages and Coordination* immediately below.

3. *Linkages and Coordination.* The NEW Act calls for coordination between JTPA and other resources available (Federal and/or State) for training women in nontraditional employment, both in the Governor's Coordination and Special Services Plan (GCSSP) developed for Title II–A and for the demonstration grants. Therefore, any linkages and collaborative efforts that exist between JTPA and other programs, such as registered apprenticeship programs or the Carl D. Perkins Vocational and Applied Technology Education Act (Perkins), Intermodal Surface Transportation Efficiency Act (ISTEA), Department of Housing and Urban Development, etc., and other Federal, State and local job training resources: (a) between JTPA and other entities, such as Federal and/or State contractors or State agencies responsible for work that is nontraditional for women (such as highway construction), or (b) other linkages established specifically for purposes of this demonstration must be clearly identified and defined, including those articulated in the GCSSP for Title II–A. In addition, the Department expects that the private sector, in their roles as members of Private Industry Councils (PICs), employers or members of Apprenticeship Committees will be called upon to play a strategic role in the design and/or delivery of training, certainly in the placement of JTPA-eligible women in nontraditional occupations. JTPA entities should consider and describe how they have or may work with the government mega-projects (large project of two or more years, costing at least $2,000,000, directly funded or assisted by government funds) in their area to develop jobs for NEW trainees.

4. *Existing Efforts and/or New Initiatives.* The extent to which the initiatives proposed by State proposals

supplement or build upon existing efforts in a State to train and place women in nontraditional employment. Program activities funded under this grant may consist of new initiatives or further development of existing programs, or a combination. Proposals shall describe any new initiatives to be implemented through this grant; the demonstrated effectiveness and efficiency of existing programs in achieving the goals of the NEW Act and the enhancements to be undertaken under this grant; and, in cases where the programmatic approach calls for a combination of new and existing programs, a description of how the new activities and existing programs will complement each other and enhance and promote an increase of women in nontraditional occupations in the JTPA System.

5. *Use of Funds.* The Technical Proposal of CBO applicants shall describe both known and anticipated expenditures that may arise in the conduct of the proposed grant activities related to NEW—List activities on which grant funds will be expended, not the specific amount. The Department is also interested in hearing about any leverage activities anticipated with NEW funds, particularly when developing NEW linkages and coordination of services. More specifically, list any leverage of funds activities taken or anticipated with this grant—any partnerships, linkages or coordination of activities, combining of streams of funding, etc. Finally, list activities on which grant funds will be expended by subgrantees (if applicable).

6. *Replication.* The extent to which a State is prepared to produce materials that allow for replication of its demonstration grant program, including capacity building and training and placement activities. As previously mentioned, it is the Department's intent that activities funded under the NEW Act lead to systemic changes that institutionalize nontraditional training within JTPA and a specified geographic area. Proposals shall indicate the strategies to be used to encourage and promote the continuation of activities once the NEW demonstration grant support has ended.

7. *Dissemination.* The extent to which the State's proposal includes activities to disseminate information on its demonstration training programs. The Department believes that one way of encouraging and promoting institutionalization of nontraditional training within a grantee's area is to plan for replication of successful programs and to disseminate information about both the demonstration and existing model programs. For that reason, proposals shall include a discussion on the extent to which the State is prepared to accomplish dissemination of information and the extent to which they are prepared to produce materials for replication of the demonstration training programs.

8. *Evaluation Approach.* The Final Report on the NEW Project shall describe expected impacts on participants as a result of the training programs. These impacts shall be measurable and attainable and may include awareness/orientation sessions to increase women's knowledge of opportunities in nontraditional occupations, attainment of training competencies, placement in registered apprenticeship training, completion of training, wage at placement, occupation at placement, and retention in employment. The discussion shall also include information on whether the proposed grant amount is sufficient to accomplish measurable goals; if, in linking with other programs, additional financial resources are expected, the proposal shall identify the source(s) of funds and their intended use.

## Part IV. Evaluation Criteria and Selection

Applicants are advised that selection for grant award is to be made after careful evaluation of technical applications by a panel. Each panelist will evaluate applications against the various criteria on the basis of 100 points. The scores will then serve as the primary basis to select applications for potential award. Clarification may be requested of grant applicants if the situation so warrants.

### *1. Technical Criteria Points*

| | Points |
|---|---|
| a. State Commitment and Involvement | 25 |
| b. Quality of Overall Program; Use of Funds; Supplement and/or Expand | 20 |
| c. Private Sector Involvement with NEW; Linkages and Coordination | 20 |
| d. Replication and Dissemination | 20 |
| e. Evaluation Approach | 15 |

### *2. Cost Criteria*

Proposals will be scored, based on their costs in relation to other proposals submitted in response to this SGA. Specifically, the lowest priced proposal will receive 150 points, based on the following formula:

(lowest priced proposal/proposal cost) × 150

All other proposals will receive points using the above formula. For example, if the lowest priced proposal had a total Federal budget of $5,000, it would receive a cost score of 150. If another proposal had a total Federal budget of $10,000, it would receive a score of 75 (i.e., $5,000/$10,000) × 150).

### *3. Total Score*

Technical quality of proposals will be weighted three (3) times the estimated price in ranking proposals, for purposes of selections for award.

To elaborate, using the above example, if the proposal requesting $5,000 of Federal funding received a technical score of 87, the Total Score would be 411 points (i.e., (87 × 3) + 150 = 411); if the proposal requesting $10,000 of Federal funding received a technical score of 120, the Total Score would be 435 (i.e., (120 × 3) + 75 = 435).

### *4. Criteria for Award*

Proposals received will be evaluated by a review panel based on the criteria immediately following. The panel's recommendations will be advisory, and final awards will be made based on the best interests of the Government, taking into account such factors as technical quality, geographic balance, and other factors.

The Department wishes to make it clear that it is not simply the best-written proposals that will be chosen, but rather those which demonstrate the greatest State commitment to the goals of the NEW Act and which best incorporate the principal features of this demonstration.

### *5. Allowable Cost*

Payment up to the amount specified in the grant shall be made only for allowable, allocable, and reasonable costs actually incurred in conducting the work under the grant. The determination of allowable costs shall be made in accordance with the following applicable Federal Cost principles:

State and Local Governments—OMB Circular A–87
Educational Institutions—OMB Circular A–21
Non-Profit Organizations—OMB Circular A–122
Profit Making Commercial Firms—FAR 48 CFR Part 31.

Profit will *not* be considered an allowable cost in any case.

### *6. Administrative Provisions*

The grant awarded under this SGA shall be subject to the following administrative standards and provisions:

29 CFR Part 95—Uniform Administrative Requirements Governing Department of Labor Grants and Agreements (does not apply to grants with State and local Governments and Indian Tribes);
Section 165 of the Job Training Partnership Act Reports, Recordkeeping and Investigations (applicable to grants funded with JTPA funds);
29 CFR Part 97—Uniform Administrative Requirements for Grants and Cooperative Agreements to State and Local Governments;
29 CFR Part 96—Audits of Federally Funded Grants, Contacts and Agreements.

*7. Grant Assurances and Certifications*

The applicant must include the attached assurances and certifications.

Part V. Deliverables

1. No later than four (4) weeks after award, the grantee shall meet with the Women's Bureau to discuss program activities, timelines, and evaluation design for comment and final approval. The Women's Bureau will provide input orally and in writing, if necessary, within ten (10) working days after the meeting.

2. No later than eight (8) weeks after award, the grantee shall provide the Women's Bureau with a detailed Program Execution and Implementation Plan, including any subgrantee arrangements, for comment and final approval. The Women's Bureau shall provide written comments, if necessary, within ten (10) working days.

3. No later than twelve (12) weeks after award, the grantee shall begin the program of nontraditional training for women.

4. Quarter progress reports should include:

a. A description of overall progress on work performed during the reporting period, including (1) number and profiles (including selected photos) of participants in prevocational and skilled training or placed, including JTPA Title II–A female participants; awareness activities; JTPA staff capacity building activities; during the period; (2) systemic workplace and policy changes—actual or in process; (3) public presentations; (4) media articles or appearances; (5) publications disseminated and (6) publications developed.

b. An indication of any current problems which may impede performance and the proposed corrective action.

c. A discussion of work to be performed during the next reporting period. Include any job development or technical assistance with mega-projects and other employers to provide employment for women in nontraditional occupations.

Between scheduled reporting dates the grantee shall also immediately inform the Grant Officer's Technical Representative of significant developments affecting the grantee's ability to accomplish the work.

5. No later than forty-eight (48) weeks after award, the grantee shall submit a Replication and Dissemination Plan that describes the grantee's plans for disseminating information about the demonstration program and for future replication of the demonstration in other geographic areas. The Women's Bureau shall provide written comments, if necessary, within twenty (20) working days. The Bureau's comments shall be incorporated into the plan.

6. No later than fifty-two (52) weeks after award, the grantee shall submit, in one (1) camera ready copy and one (1) diskette (IBM compatible; WordPerfect 5.1), an integrated draft report of the process and results of the training program completed during the year. The report shall include, at a minimum, context, impact and the relationship between this program and ongoing programs in the labor market delivery area, preliminary data on planned versus actual accomplishments, characteristics of participants, participant outcomes, wage and occupation at placement, and the follow-up activities planned for the program. The Women's Bureau will provide written comments on the draft report within twenty (20) working days if substantive problems are identified. The grantee's response to these comments shall be incorporated into the final report.

7. No later than sixty-four (64) weeks after award, the grantee shall submit one (1) camera ready copy and one (1) diskette (IBM compatible, WordPerfect 5.1) of the final report. The report shall cover findings, final performance data, evaluation results (where applicable), and plans for follow-up of participants. The Final Report should be designed, developed and written along professionally accepted standards. Copies of training curricula shall be included, as well as the final plan for replication and dissemination of information. An Executive Summary of the findings and recommendations, if any, shall either be included in the report or accompany the report.

Signed at Washington, D.C. on February 23, 1996.

Dated: February 23, 1996.

Lawrence J. Kuss,

*Grant Officer.*

Appendix A

*Assurances and Certifications Signature Page*

The Department of Labor will not award a grant or agreement where the grantee/recipient has failed to accept the *ASSURANCES AND CERTIFICATIONS* contained in this section. By signing and returning this signature page, the grantee/recipient is providing the certifications set for below:

A. Assurances—Non-Construction programs
B. Debarment, Suspension, Ineligibility and Voluntary Exclusion—Lower Tier Transaction
C. Certifications Regarding Lobbying: Debarment, Suspension, Drug-Free Workplace
D. Certification of Release of Information
E. Nondiscrimination and Equal Opportunity Requirement of JTPA

Applicant Name: _____

Date: _____

If there is any reason why one of the assurances or certifications listed cannot be signed, please explain. Applicant need only submit and return this signature page with the grant application. All other instructions shall be kept on file by the applicant.

_____

Signature of Authorized Certifying Official

_____

Applicant Organization

_____

Title

_____

Date Submitted

*Please Note:* This signature page and any pertinent attachments which may be required by these assurances and certifications shall be attached to the applicant's Cost Proposal.

BILLING CODE 4510–23–P

## APPENDIX B

OMB Approval No. 0348-0043

**APPLICATION FOR FEDERAL ASSISTANCE**

| | | |
|---|---|---|
| 1. TYPE OF SUBMISSION: *Application* ☐ Construction ☐ Non-Construction; *Preapplication* ☐ Construction ☐ Non-Construction | 2. DATE SUBMITTED | Applicant Identifier |
| | 3. DATE RECEIVED BY STATE | State Application Identifier |
| | 4. DATE RECEIVED BY FEDERAL AGENCY | Federal Identifier |

**5. APPLICANT INFORMATION**

| | |
|---|---|
| Legal Name: | Organizational Unit: |
| Address *(give city, county, state, and zip code)*: | Name and telephone number of the person to be contacted on matters involving this application *(give area code)* |

**6. EMPLOYER IDENTIFICATION NUMBER (EIN):** ☐☐ – ☐☐☐☐☐☐☐

**7. TYPE OF APPLICANT:** *(enter appropriate letter in box)* ☐

A. State
B. County
C. Municipal
D. Township
E. Interstate
F. Intermunicipal
G. Special District
H. Independent School Dist.
I. State Controlled Institution of Higher Learning
J. Private University
K. Indian Tribe
L. Individual
M. Profit Organization
N. Other (Specify): _____

**8. TYPE OF APPLICATION:**

☐ New ☐ Continuation ☐ Revision

If Revision, enter appropriate letter(s) in box(es): ☐ ☐

A. Increase Award B. Decrease Award C. Increase Duration
D. Decrease Duration Other *(specify)*:

_____

**9. NAME OF FEDERAL AGENCY:**

**10. CATALOG OF FEDERAL DOMESTIC ASSISTANCE NUMBER:** ☐☐.☐☐☐

TITLE:

**11. DESCRIPTIVE TITLE OF APPLICANT'S PROJECT:**

**12. AREAS AFFECTED BY PROJECT** *(cities, counties, states, etc.)*:

| 13. PROPOSED PROJECT: Start Date | Ending Date | 14. CONGRESSIONAL DISTRICTS OF: a. Applicant | b. Project |
|---|---|---|---|
| | | | |

**15. ESTIMATED FUNDING:**

| | | |
|---|---|---|
| a. Federal | $ | .00 |
| b. Applicant | $ | .00 |
| c. State | $ | .00 |
| d. Local | $ | .00 |
| e. Other | $ | .00 |
| f. Program Income | $ | .00 |
| g. TOTAL | $ | .00 |

**16. IS APPLICATION SUBJECT TO REVIEW BY STATE EXECUTIVE ORDER 12372 PROCESS?**

a. YES. THIS PREAPPLICATION/APPLICATION WAS MADE AVAILABLE TO THE STATE EXECUTIVE ORDER 12372 PROCESS FOR REVIEW ON:

DATE_____

b. NO. ☐ PROGRAM IS NOT COVERED BY E.O. 12372

☐ OR PROGRAM HAS NOT BEEN SELECTED BY STATE FOR REVIEW

**17. IS THE APPLICANT DELINQUENT ON ANY FEDERAL DEBT?**

☐ Yes If "Yes," attach an explanation. ☐ No

**18. TO THE BEST OF MY KNOWLEDGE AND BELIEF, ALL DATA IN THIS APPLICATION/PREAPPLICATION ARE TRUE AND CORRECT, THE DOCUMENT HAS BEEN DULY AUTHORIZED BY THE GOVERNING BODY OF THE APPLICANT AND THE APPLICANT WILL COMPLY WITH THE ATTACHED ASSURANCES IF THE ASSISTANCE IS AWARDED**

| | | |
|---|---|---|
| a. Typed Name of Authorized Representative | b. Title | c. Telephone number |
| d. Signature of Authorized Representative | | e. Date Signed |

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Standard Form 424 (REV 4-88)
Prescribed by OMB Circular A-102

## INSTRUCTIONS FOR THE SF 424

**This is a standard form used by applicants as a required facesheet for preapplications and applications submitted for Federal assistance. It will be used by Federal agencies to obtain applicant certification that States which have established a review and comment procedure in response to Executive Order 12372 and have selected the program to be included in their process, have been given an opportunity to review the applicant's submission.**

| Item: | Entry: |
|---|---|
| 1. | Self-explanatory. |
| 2. | Date application submitted to Federal agency (or State if applicable) & applicant's control number (if applicable). |
| 3. | State use only (if applicable). |
| 4. | If this application is to continue or revise an existing award, enter present Federal identifier number. If for a new project, leave blank. |
| 5. | Legal name of applicant, name of primary organizational unit which will undertake the assistance activity, complete address of the applicant, and name and telephone number of the person to contact on matters related to this application. |
| 6. | Enter Employer Identification Number (EIN) as assigned by the Internal Revenue Service. |
| 7. | Enter the appropriate letter in the space provided. |
| 8. | Check appropriate box and enter appropriate letter(s) in the space(s) provided:<br>— "New" means a new assistance award.<br>— "Continuation" means an extension for an additional funding/budget period for a project with a projected completion date.<br>— "Revision" means any change in the Federal Government's financial obligation or contingent liability from an existing obligation. |
| 9. | Name of Federal agency from which assistance is being requested with this application. |
| 10. | Use the Catalog of Federal Domestic Assistance number and title of the program under which assistance is requested. |
| 11. | Enter a brief descriptive title of the project. if more than one program is involved, you should append an explanation on a separate sheet. If appropriate (e.g., construction or real property projects), attach a map showing project location. For preapplications, use a separate sheet to provide a summary description of this project. |
| 12. | List only the largest political entities affected (e.g., State, counties, cities). |
| 13. | Self-explanatory. |
| 14. | List the applicant's Congressional District and any District(s) affected by the program or project. |
| 15. | Amount requested or to be contributed during the first funding/budget period by each contributor. Value of in-kind contributions should be included on appropriate lines as applicable. If the action will result in a dollar change to an existing award, indicate *only* the amount of the change. For decreases, enclose the amounts in parentheses. If both basic and supplemental amounts are included, show breakdown on an attached sheet. For multiple program funding, use totals and show breakdown using same categories as item 15. |
| 16. | Applicants should contact the State Single Point of Contact (SPOC) for Federal Executive Order 12372 to determine whether the application is subject to the State intergovernmental review process. |
| 17. | This question applies to the applicant organization, not the person who signs as the authorized representative. Categories of debt include delinquent audit disallowances, loans and taxes. |
| 18. | To be signed by the authorized representative of the applicant. A copy of the governing body's authorization for you to sign this application as official representative must be on file in the applicant's office. (Certain Federal agencies may require that this authorization be submitted as part of the application.) |

APPENDIX C

## BUDGET INFORMATION - Non Construction Programs

| Catalog of Federal Domestic Assistance | Estimated Unobligated Funds | | New or Revised Budget | |
|---|---|---|---|---|
| CFDA NUMBER | FEDERAL | NON-FEDERAL | FEDERAL | NON-FEDERAL |
| 1._____ | $_____ | $_____ | $_____ | $_____ |
| 2._____ | $_____ | $_____ | $_____ | $_____ |

| COST CATEGORY | FEDERAL FUNDING | | | NON-FEDERAL CONTRIBUTION | | |
|---|---|---|---|---|---|---|
| DIRECT COST | CURRENT FEDERAL BUDGET | REVISIONS AND/OR EXTENSIONS | REVISED FEDERAL BUDGET | CURRENT AWARDEE BUDGET | REVISIONS AND/OR EXTENSIONS | REVISED AWARDEE BUDGET |
| (A) PERSONNEL | $ | | | | | |
| (B) FRINGE BENEFITS | | | | | | |
| (C) TRAVEL & PER DIEM | | | | | | |
| (D) EQUIPMENT | | | | | | |
| (E) SUPPLIES | | | | | | |
| (F) CONTRACTUAL | | | | | | |
| (G) OTHER | | | | | | |
| TOTAL DIRECT COST | $ | | | | | |
| INDIRECT COST | | | | | | |
| TOTAL ESTIMATED COST | $ | | | | | |

AUTHORIZED FOR LOCAL REPRODUCTION SF424-A

[FR Doc. 96-4580 Filed 2-28-96; 8:45 am]
BILLING CODE 4510-23-C

## Labor Advisory Committee for Trade Negotiations and Trade Policy; Meeting

Pursuant to the provisions of the Federal Advisory Committee Act (Pub. L. 92–463 as amended), notice is hereby given of a meeting of the Steering Subcommittee of the Labor Advisory Committee for Trade Negotiations and Trade Policy.

*Date, time and place:* March 11, 1996, 10:00 am–12:00 noon, U.S. Department of Labor, Room S–1011, 200 Constitution Ave., NW., Washington, D.C. 20210.

*Purpose:* The meeting will include a review and discussion of current issues which influence U.S. trade policy. Potential U.S. negotiating objectives and bargaining positions in current and anticipated trade negotiations will be discussed. Pursuant to section 9(B) of the Government in the Sunshine Act, 5 U.S.C. 552b(c)(9)(B) it has been determined that the meeting will be concerned with matters the disclosure of which would seriously compromise the Government's negotiating objectives or bargaining positions. Accordingly, the meeting will be closed to the public.

*For further information, contact:* Fernand Lavallee, Director, Trade Advisory Group, Phone: (202) 219–4752.

Signed at Washington, D.C. this 23rd day of February 1996.

Joaquin Otero,

*Deputy Under Secretary, International Affairs.*

[FR Doc. 96–4613 Filed 2–28–96; 8:45 am]

BILLING CODE 4510–28–M

## Employment and Training Administration

**[TA–W–31, 394; TA–W–31, 394A]**

## Bike Athletic Company; Knoxville, Tennessee and Cherryville, North Carolina; Amended Certification Regarding Eligibility To Apply for Worker Adjustment Assistance

In accordance with Section 223 of the Trade Act of 1974 (19 U.S.C. 2273) the Department of Labor issued a Certification of Eligibility to Apply for Worker Adjustment Assistance on September 25, 1995, applicable to all workers of Bike Athletic Company located in Knoxville, Tennessee. The notice was published in the Federal Register on October 5, 1995 (60 FR 52213).

Based on new information received from petitioners, the Department reviewed the certification for workers of the subject firm. New information provided by the company shows that layoffs have occurred at the subject firm's Cherryville, North Carolina plant. The workers are engaged in the production of athletic apparel.

Accordingly, the Department is amending the certification to cover the workers of Bike Athletic located in Cherryville.

The intent of the Department's certification is to include all workers of the subject firm who were adversely affected by increased imports.

The amended notice applicable to TA–W–31, 394 is hereby issued as follows:

''All workers of Bike Athletic Company, Knoxville, Tennessee (TA–W–31, 394A) who became totally or partially separated from employment on or after August 23, 1994 are eligible to apply for adjustment assistance under Section 223 of the Trade Act of 1974.''

Signed at Washington, D.C. this 20th day of February 1996.

Russell T. Kile,

*Acting Program Manager, Policy and Reemployment Services, Office of Trade Adjustment Assistance.*

[FR Doc. 96–4627 Filed 2–28–96; 8:45 am]

BILLING CODE 4510–30–M

**[TA–W–31,839]**

## Champion Products, Inc. Scottsboro, Alabama; Notice of Termination of Investigation

Pursuant to Section 221 of the Trade Act of 1974, an investigation was initiated on February 5, 1996 in response to a worker petition which was filed January 11, 1996 on behalf of workers at Champion Products, Scottsboro, Alabama (TA–W–31,839).

The petitioning group of workers are covered under an existing Trade Adjustment Assistance certification (TA–W–30,172A). Consequently, further investigation in this case would service no purpose, and the investigation has been terminated.

Signed at Washington, DC, this 16th day of February 1996.

Russell T. Kile,

*Acting Program Manager, Policy and Reemployment Services, Office of Trade Adjustment Assistance.*

[FR Doc. 96–4623 Filed 2–28–96; 8:45 am]

BILLING CODE 4510–30–M

**[TA–W–30,172; TA–W–30,172A]**

## Champion Products, Inc.; Slocomb, Alabama and Scottsboro, Alabama; Amended Certification Regarding Eligibility To Apply for Worker Adjustment Assistance

In accordance with Section 223 of the Trade Act of 1974 (19 U.S.C. 2273) the Department of Labor issued a Certification of Eligibility to Apply for Worker Adjustment Assistance on August 29, 1994, applicable to all workers of Champion Products, Inc. located in Slocomb, Alabama. The notice was published in the Federal Register on October 4, 1994 (59 FR 50625).

Based on new information received from petitioners, the Department reviewed the certification for workers of the subject firm. New information provided by the company shows that the subject firm's Scottsboro, Alabama plant was scheduled to begin closing on January 26, 1996. All workers are involved in the production of fleece sweatsuits and will be terminated from employment. Accordingly, the Department is amending the certification to cover the workers of Champion Products located in Scottsboro.

The intent of the Department's certification is to include all workers of the subject firm who were adversely affected by increased imports.

The amended notice applicable to TA–W–30,172 is hereby issued as follows:

''All workers of Champion Products, Inc., Slocomb, Alabama (TA–W–30,172), and Scottsboro, Alabama (TA–W–30, 172A) engaged in employment related to the production of fleece sweatsuits, who became totally or partially separated from employment on or after July 22, 1993 are eligible to apply for adjustment assistance under Section 223 of the Trade Act of 1974.''

Signed at Washington, D.C. this 16th day of February 1996.

Russell T. Kile,

*Acting Program Manager, Policy and Reemployment Services, Office of Trade Adjustment Assistance.*

[FR Doc. 96–4625 Filed 2–28–96; 8:45 am]

BILLING CODE 4510–30–M

## Investigations Regarding Certifications of Eligibility To Apply for Worker Adjustment Assistance

Petitions have been filed with the Secretary of labor under Section 221(a) of the Trade Act of 1974 (''the Act'') and are identified in the Appendix to this notice. Upon receipt of these petitions, the Program Manager of the Office of Trade Adjustment Assistance, Employment and Training Administration, has instituted investigations pursuant to Section 221(a) of the Act.

The purpose of each of the investigations is to determine whether the workers are eligible to apply for adjustment assistance under Title II, Chapter 2, of the Act. The investigations

will further relate, as appropriate, to the determination of the date on which total or partial separations began or threatened to begin and the subdivision of the firm involved.

The petitioners of any other persons showing a substantial interest in the subject matter of the investigations may request a public hearing, provided such request is filed in writing with the Program Manager, Office of Trade Adjustment Assistance, at the address shown below, not later than March 11, 1996.

Interested persons are invited to submit written comments regarding the subject matter of the investigations to the Program Manager, Office of Trade Adjustment Assistance, at the address shown below, not later than March 11, 1996.

The petitions filed in this case are available for inspection at the Office of the Program Manager, Office of Trade Adjustment Assistance, Employment and Training Administration, U.S. Department of Labor, 200 Constitution Avenue NW., Washington, DC 20210.

Signed at Washington, DC this 20th day of February, 1996.

Russell Kile,

*Acting Program Manager, Policy and Reemployment Services Office of Trade Adjustment Assistance.*

Appendix

PETITIONS INSTITUTED ON FEB. 20, 1996

| TA–W– | Subject firm (petitioners) | Location | Date of petition | Product(s) |
|---|---|---|---|---|
| 31,920 | Doranco, Inc. (Co) | Attleboro Falls, MA | 01/31/96 | Brackets, Nameplates. |
| 31,921 | Pope and Talbot, Inc. (UPIU) | Eau Claire, WI | 01/31/96 | Infants Diapers. |
| 31,922 | JPS Elastomerics, Corp. (Co.) | Stuart, VA | 01/17/96 | Cut Rubber Thread. |
| 31,923 | Sanfatex, Inc. (Co.) | Red Springs, NC | 01/26/96 | Shirts. |
| 31,924 | Marine Transport Lines (NMU) | Weehawken, NJ | 02/05/96 | Ocean-Going Transportation. |
| 31,925 | Grow Group, Inc. (Co.) | New York, NY | 02/06/96 | Office Workers (Paints, Household Prod). |
| 31,926 | McAllen Separation Co. (Co.) | Mt. Gilead, NC | 01/29/96 | Separate Threads from Collars. |
| 31,927 | Selment, Inc. (Wkrs) | Albany, OR | 01/19/96 | Golf Club Heads. |
| 31,928 | Hobet Mining, Inc. (UMWA) | Madison, WV | 02/02/96 | Coal Mining. |
| 31,929 | Hollander Home Fashions (Wkrs) | Rogers, AR | 01/26/96 | Polyester, Feather Bed and Pillows. |
| 31,930 | Quality Stitching, Inc. (Wkrs) | Saluda, SC | 02/01/96 | Boxer Shorts. |
| 31,931 | Jonbil, Inc. (Co.) | Henderson, NC | 01/25/96 | Jeans. |
| 31,932 | Hines Oregon Millwork Ent (Co.) | Hines, OR | 01/15/96 | Millwork. |
| 31,933 | Victory Corrugated Cont. (Workers) | Roselle, NJ | 01/28/96 | Corrugated boxes. |
| 31,934 | Norwich Manufacturing (Wkrs) | Norwich, NY | 02/01/96 | Plastic vacuum parts. |
| 31,935 | Parsons Texties (Comp) | Casa Grande, AZ | 02/12/96 | Outer sportswear. |

[FR Doc. 96–4615 Filed 2–28–96; 8:45 am]

BILLING CODE 4510–30–M

**[TA–W–31,914]**

## E & J Apparel, W. Jordon, Utah; Notice of Termination of Investigation

Pursuant to Section 221 of the Trade Act of 1974, an investigation was initiated on February 7, 1996 in response to a worker petition which was filed January 16, 1996 on behalf of workers at E & J Apparel, W. Jordon, Utah (TA–W–31,914).

The petitioning group of workers are covered under an existing Trade Adjustment Assistance certification (TA–W–31,138A). Consequently, further investigation in this case would service no purpose, and the investigation has been terminated.

Signed at Washington, D.C., this 15th day of February 1996.

Russell T. Kile,

*Acting Program Manager, Policy and Reemployment Services, Office of Trade Adjustment Assistance.*

[FR Doc. 96–4621 Filed 2–28–96; 8:45 am]

BILLING CODE 4510–30–M

**[TA–W–31,138; TA–W–31,138A]**

## Layton Sportswear, Layton, Utah and E & J Apparel Manufacturing, W. Jordan, Utah; Amended Certification Regarding Eligibility To Apply for Worker Adjustment Assistance

In accordance with Section 223 of the Trade Act of 1974 (19 U.S.C. 2273) the Department of Labor issued a Certification of Eligibility to Apply for Worker Adjustment Assistance on August 15, 1995, applicable to all workers of Layton Sportswear located in Layton, Utah. The notice was published in the Federal Register on September 1, 1995 (60 FR 45746).

At the request of petitioners, the Department reviewed the certification for workers of the subject firm. New information provided by the company shows that worker separations have occurred at E & J Apparel, W. Jordan, Utah. E & J Apparel is the same company as Layton Sportswear. The workers are engaged in the production of men's and boys' sportswear and girls' dresses.

The intent of the Department's certification is to include all workers of the subject firm who were adversely affected by increased imports of apparel. The Department is amending the certification to cover the workers of E & J Apparel.

The amended notice applicable to TA–W–31,138 is hereby issued as follows:

All workers of Layton Sportswear, Layton, Utah (TA–W–31,138), and E & J Apparel, W. Jordan, Utah (TA–W–31,138A) who became totally or partially separated from employment on or after June 2, 1994 are eligible to apply for adjustment assistance under Section 223 of the Trade Act of 1974.''

Signed at Washington, DC this 15th day of February 1996.

Russell T. Kile,

*Acting Program Manager, Policy and Reemployment Services, Office of Trade Adjustment Assistance.*

[FR Doc. 96–4620 Filed 2–28–96; 8:45 am]

BILLING CODE 4510–30–M

**[TA–W–30,120N]**

## Mobile Exploration and Producing U.S., Incorporated (MEPUS) Houston Division a/k/a Mobil Administration Service Company Inc. (MASCI) a/k/a Mobil Natural Gas, Inc. (MNGI) Headquartered in Houston, Texas; Amended Certification Regarding Eligibility To Apply for Worker Adjustment Assistance

Operating at Other Sites in the Following States: TA–W–30, 120O California; TA–W–30,120P Louisiana; TA–W–30,120Q New Mexico; TA–W–30,120R Oklahoma; and TA–W–31,120S Texas.

In accordance with Section 223 of the Trade Act of 1974 (19 U.S.C. 2273) the Department of Labor issued a Certification of Eligibility to apply for Worker Adjustment Assistance on September 30, 1994, applicable to all workers of Mobil Exploration and Producing U.S., Incorporated (MEPUS), Houston Division, headquartered in Houston, Texas and operating at various locations in the United States. The notice was published in the Federal Register on October 21, 1994 (59 FR 53211). The certification was amended on September 20, 1995 to include other corporate affiliates. The notice was published in the Federal Register on November 7, 1995 (60 FR 56173).

At the request of the company, the Department reviewed the subject certification. New information received from the company shows that worker separations will occur at Mobil Natural Gas Inc., which is a corporate affiliate of MEPUS. The workers are engaged in employment related to the marketing of crude oil and natural gas.

The intent of the Department's certification is to include all workers of the subject firm who were adversely affected by increased imports of crude oil and natural gas. Accordingly, the Department is amending the certification to include the workers of Mobil Natural Gas Inc.

The amended notice applicable to TA–W–30,120 is hereby issued as follows:

''All workers of Mobil Exploration and Producing U.S., Incorporated (MEPUS), Houston Division, a/k/a Mobil Administrative Service Company, Inc. (MASCI), a/k/a Mobil Natural Gas, Inc. (MNGI), headquartered in Houston, Texas (TA–W–30,120N); and operating at other sites in California (TA–W–30,120N), and operating at other sites in California (TA–W–30,1200), Louisiana (TA–W–30,120P), New Mexico (TA–31,120Q), Oklahoma (TA–W–30,120R), and Texas (TA–W–31,120S) engaged in activities related to exploration and production of crude oil and natural gas who became totally or partially separated from employment on or after April 30, 1994 are eligible to apply for adjustment assistance under Section 223 of the Trade Act of 1974.''

Signed at Washington, DC this 15th day of February 1996.

Russell T. Kile,

*Acting Program Manager, Policy and Reemployment Services, Office of Trade Adjustment Assistance.*

[FR Doc. 96–4624 Filed 2–28–96; 8:45 am]

BILLING CODE 4510–30–M

## Investigations Regarding Certifications of Eligibility To Apply for Worker Adjustment Assistance

Petitions have been filed with the Secretary of Labor under Section 221(a) of the Trade Act of 1974 (''the Act'') and are identified in the Appendix to this notice. Upon receipt of these petitions, the Program Manager of the Office of Trade Adjustment Assistance, Employment and Training Administration, has instituted investigations pursuant to Section 221(a) of the Act.

The purpose of each of the investigations is to determine whether the workers are eligible to apply for adjustment assistance under Title II, Chapter 2, of the Act. The investigations will further relate, as appropriate, to the determination of the date on which total or partial separations began or threatened to begin and the subdivision of the firm involved.

The petitioners or any other persons showing a substantial interest in the subject matter of the investigations may request a public hearing, provided such request is filed in writing with the Program Manager, Office of Trade Adjustment Assistance, at the address shown below, not later than March 11, 1996.

Interested persons are invited to submit written comments regarding the subject matter of the investigations to the Program Manager, Office of Trade Adjustment Assistance, at the address shown below, not later than March 11, 1996.

The petitions filed in this case are available for inspection at the Office of the Program Manager, Office of Trade Adjustment Assistance, Employment and Training Administration, U.S. Department of Labor, 200 Constitution Avenue, N.W., Washington, D.C. 20210.

Signed at Washington, D.C. this 12th day of February, 1996.

Russell Kile,

*Acting Program Manager, Policy and Reemployment Services Office of Trade Adjustment Assistance.*

Appendix

PETITIONS INSTITUTED ON FEB. 12, 1996

| TA–W– | Subject firm (petitioners) | Location | Date of petition | Product(s) |
|---|---|---|---|---|
| 31,888 | Porter House Ltd. (Co.) | New York, NY | 01/29/96 | Ladies' Wear. |
| 31,889 | Kids Today, LTD (Co.) | New York City, NY | 01/25/96 | Children's Shirts and T-Shirts. |
| 31,890 | Christian Bros. Logging (Co. Wkr) | Cascade, ID | 01/19/96 | Timber. |
| 31,891 | Medical Textiles, Inc. (Co.) | South Boston, VA | 01/30/96 | Orthopedic Elastic. |
| 31,892 | Augat, Inc. (Co.) | Mashpee, MA | 02/02/96 | Electronic Related Products. |
| 31,893 | Pent House Sale Corp. (Wkrs) | Franklin, MA | 01/24/96 | Ladies Belts, Accessories. |
| 31,894 | Inland Container Corp. (UPIU) | Macon, GA | 01/26/96 | Corrugated Boxes. |
| 31,895 | Mallinckrodt Medical (Wkrs) | St. Louis, MO | 12/03/95 | Medical Supplies. |
| 31,896 | Rivera Shirt Factory (Wkrs) | Pontotoc, MS | 01/19/96 | Men's and Boys' Shirts. |
| 31,897 | Kenwood U.S.A. (Wkrs) | Mt. Olive, NJ | 12/21/95 | Warehouse/Sales Office. |

PETITIONS INSTITUTED ON FEB. 12, 1996—Continued

| TA–W– | Subject firm (petitioners) | Location | Date of petition | Product(s) |
|---|---|---|---|---|
| 31,898 | Tandy Electronics Design (Wkrs) | Ft. Worth, TX | 01/22/96 | Design of Consumer Electronics. |
| 31,899 | Marion Plywood Corp. (Wkrs) | Shawano, WI | 01/25/96 | Interior/Exterior Door and Window Parts. |
| 31,900 | BHP Petroleum Inc. (Co.) | Houston, TX | 01/24/96 | Oil and Gas. |
| 31,901 | Anchor Glass Container (GMP) | Cliffwood, NJ | 01/05/96 | Glass Bottles and Jars. |
| 31,902 | Globe Business Furniture (IUE) | Franklin, KY | 01/10/96 | Office Furniture. |
| 31,903 | West Point Stevens, Inc. (Wkrs) | Biddeford, ME | 01/18/96 | Blankets. |
| 31,904 | Americana Knitting Mills (Wkrs) | Opa Locka, FL | 01/18/96 | Fabrics. |
| 31,905 | Bass Manufacturing (Co.) | Camden, TN | 01/12/96 | Ladies' Tops. |
| 31,906 | H.H. Cutler Co. (Wkrs) | Oxford, MS | 01/18/96 | Infants and Childrens' Playwear. |
| 31,907 | National Metal Products (SEIU) | Bensonville, IL | 01/18/96 | Auto Parts for Ford. |
| 31,908 | Quality Stitch (Co.) | Sparta, GA | 01/24/96 | Jeans. |
| 31,909 | Whispering Pines Sports. (Wkrs) | Pageland, SC | 01/19/96 | Men's and Ladies' Polo Type Gulf Shirts. |
| 31,910 | Augat Wiring Systems (Comp) | Montgomery, AL | 01/17/96 | Automotive Wiring Assemblies. |
| 31,911 | Bausch & Lomb (Wkrs) | Oakland, MD | 01/26/96 | Sunglass Lenses. |
| 31,912 | Bausch & Lomb (Wkrs) | Tucker, GA | 01/19/96 | Electric Toothbrushes. |
| 31,913 | Florsheim Shoe Company (Wkrs) | Cape Girardeau, MO | 01/22/96 | Men's Shoes. |
| 31,914 | E & J Apparel (Wkrs) | West Jordan, UT | 01/16/96 | Men's and Boys' Sportswear, Girl's Dresses. |
| 31,915 | Imperial Bondware (Wkrs) | LaFayette, GA | 01/11/96 | Plastic Drinking Cups and Lids. |
| 31,916 | Imperial Wallcovering (UPIU) | Hammond, IN | 01/19/96 | Wallpaper. |
| 31,917 | Stitches (Wkrs) | El Paso, TX | 01/11/96 | Garments. |
| 31,918 | Takata Inc. (Wkrs) | Del Rio, TX | 01/24/96 | Safety Restraints for Auto Industry. |
| 31,919 | Toymax Inc. (Comp) | Westburn, NY | 01/26/96 | Toys. |

[FR Doc. 96–4617 Filed 2–28–96; 8:45 am]

BILLING CODE 4510–30–M

**[TA–W–31,315; TA–W–31,315A]**

## Wirekraft Industries, Inc. Burcliff Division; Ft. Smith, Arkansas and Franklin, North Carolina; Amended Certification Regarding Eligibility To Apply for Worker Adjustment Assistance

In accordance with Section 223 of the Trade Act of 1974 (19 U.S.C. 2273) the Department of Labor issued a Certification of Eligibility to Apply for Worker Adjustment Assistance on August 28, 1995, applicable to all workers of Wirekraft Industries, Burcliff Division, located in Ft. Smith Arkansas. The notice was published in the Federal Register on September 26, 1995 (60 FR 49635).

Based on new information received from petitioners, the Department reviewed the certification for workers of the subject firm. The workers are engaged in the production of electrical wiring harnesses for ranges and refrigerators, as well as controls for small electrical appliances. The company reports that layoffs will occur at the subject firm's Franklin, North Carolina location, when plant closure begins in March 1996. Accordingly, the Department is amending the certification to cover the workers of the subject firm located in Franklin.

The intent of the Department's certification is to include all workers of the subject firm who were adversely affected by increased imports.

The amended notice applicable to TA–W–31,315 is hereby issued as follows:

''All workers of Wirekraft Industries, Inc., Burcliff Division, Ft. Smith, Arkansas (TA–W–31,315) and Franklin, North Carolina (TA–W–31,315A) who became totally or partially separated from employment on or after July 25, 1994 are eligible to apply for adjustment assistance under Section 223 of the Trade Act of 1974.''

Signed at Washington, D.C. this 20th day of February 1996.

Russell T. Kile,

*Acting Program Manager, Policy and Reemployment Services, Office of Trade Adjustment Assistance.*

[FR Doc. 96–4626 Filed 2–28–96; 8:45 am]

BILLING CODE 4510–30–M

**[NAFTA–00697]**

## Boise Cascade, Timber & Wood Products Division La Grande, OR; Determinations Regarding Eligibility to Apply for NAFTA Transitional Adjustment Assistance; Correction

This notice corrects the notice on petition NAFTA–00697 which was published in the Federal Register on February 9, 1996 (61 FR 5036) is FR Document 96–2892.

The Department inadvertently cited the location of the subject firm as Yakima, Washington.

The notice of termination of investigation for petition NAFTA–00697 appearing on page 5036 should read: ''Boise Cascade, Timber & Wood Products Division, La Grande, Oregon.''

Signed in Washington, D.C., this 15th day of February 1996.

Russell T. Kile,

*Acting Program Manager, Policy and Reemployment Services, Office of Trade Adjustment Assistance.*

[FR Doc. 96–4618 Filed 2–28–96; 8:45 am]

BILLING CODE 4510–30–M

**[NAFTA–00728]**

### Karl J. Marx Company, Inc., New York, New York; Negative Determination Regarding Eligibility To Apply for NAFTA-Transitional Adjustment Assistance

Pursuant to Title V of the North American Free Trade Agreement Implementation Act (Pub. L. 103–182) concerning transitional adjustment assistance, hereinafter called (NAFTA–TAA) and in accordance with Section 250(a), Subchapter D, Chapter 2, Title II, of the Trade Act of 1974, as amended (19 U.S.C. 2331), the Department of Labor herein presents the results of an investigation regarding certification of eligibility to apply for NAFTA–TAA.

The investigation was initiated on December 13, 1995 in response to a petition filed on behalf of workers at the Karl J. Marx Company, Inc. located in New York, New York. The workers were engaged in the activities solely related to buying and selling fully manufactured clothing goods. The Karl J. Marx Company, Inc. is a buying service that serves both small stores and major chain stores in assisting them in finding the best prices [of clothing and houseware goods] in the market.

The investigation revealed that the workers of the subject firm do not produce an article within the meaning of Section 250(a) of the Trade Act, as amended. The Department of Labor has consistently determined that the performance of services does not constitute production of an article, as required by the Trade Act of 1974, and this determination has been upheld in the United States Court of Appeals.

Therefore, workers at the Karl J. Marx Company, Inc. located in New York, New York may be certified only if their separation was caused importantly by a reduced demand for their services from a parent firm, a firm otherwise related to the subject firm by ownership, or a firm related by control. In any case, the reduction in demand for services must originate at a production facility whose workers independently meet the statutory criteria for certification and the reduction must directly relate to the product impacted by imports. The workers of the subject firm were not in direct support to any company affiliated production facility; therefore, these conditions have not been met for workers at the subject firm.

*Conclusion*

After careful review, I determine that all workers at Karl J. Marx Company, Inc. located in New York, New York are denied eligibility to apply for NAFTA–TAA under Section 250 of the Trade Act of 1974.

An investigation was instituted on January 22, 1996 for trade adjustment assistance (TA–W–31,789) under Section 223 of the Trade Act (19 U.S.C. 2273). A final determination should be made within 60 days of the institution date.

Signed at Washington, DC., this 25th day of January 1996.

Russell T. Kile,

*Acting Program Manager, Policy and Reemployment Services, Office of Trade Adjustment Assistance.*

[FR Doc. 96–4619 Filed 2–28–96; 8:45 am]

**BILLING CODE 4510–3–-M**

**[NAFTA–00707]**

### S.E.A. Enterprises, Inc., Kent, Washington; Notice of Termination of Investigation

Pursuant to Title V of the North American Free Trade Agreement Implementation Act (P.L. 103–182) concerning transitional adjustment assistance, hereinafter called (NAFTA–TAA), and in accordance with Section 250(a), Subchapter D, Chapter 2, Title II, of the Trade Act of 1974, as amended (19 U.S.C. 2273), an investigation was initiated on November 20, 1995 in response to a petition filed by a company official on behalf of workers at S.E.A. Enterprises, Inc. located in Kent, Washington. The subject firm is engaged in the coupon redemption service. Workers sort coupons that have been redeemed to grocery stores and send them back to the manufacturer.

In a letter dated February 16, 1996 to the Department of Labor investigator, the petitioner requested that the petition for NAFTA–TAA be withdrawn. Consequently, further investigation in this case would serve no purpose, and the investigation has been terminated.

Signed at Washington, D.C., this 16th day of February 1996.

Russell T. Kile,

*Acting Program Manager, Policy and Reemployment Services, Office of Trade Adjustment Assistance.*

[FR Doc. 96–4616 Filed 2–28–96; 8:45 am]

**BILLING CODE 4510–30–M**

## Employment Standards Administration

### Proposed Information Collection Request Submitted for Public Comment and Recommendations

1. Rehabilitation Plan and Award (OWCP–16)
2. Rehabilitation Action Report (OWCP–44)
3. Report of Changes That May Affect Your Black Lung Benefits (CM–929)
4. Report of Construction Contractor's Wage Rates (WD–10)
5. 20 CFR Part 825—The Family and Medical Leave Act of 1993
6. Notice of Recurrance of Disability and Claim for Continuation of Pay/Compensation (CA–2a)

**ACTION:** Notice.

**SUMMARY:** The Department of Labor, as part of its continuing effort to reduce paperwork and respondent burden, conducts a preclearance consultation program to provide the general public and Federal agencies with an opportunity to comment on proposed and/or continuing collections of information in accordance with the Paperwork Reduction Act of 1995 (PRA95) (44 U.S.C. 3506(c)(2)(A)). This program helps to ensure that requested data can be provided in the desired format, reporting burden (time and financial resources) is minimized, collection instruments are clearly understood, and the impact of collection requirements on respondents can be properly assessed. Currently, the Employment Standards Administration is soliciting comments concerning the proposed extension collection of: (1) Rehabilitation Plan and Award; (2) Rehabilitation Action Report; (3) Report of Changes that May Affect Your Black Lung Benefits; (4) Report of Construction Contractor's Wage Rates; (5) 20 CFR Part 825—The Family and Medical Leave Act of 1993; (6) Notice of Recurrance of Disability and Claim for Continuance of Pay/Compensation.

Copies of the proposed information collection requests can be obtained by contacting the employee listed below in the addressee section of this notice.

**DATES:** Written comments must be submitted on or before May 6, 1996. The Department of Labor is particularly interested in comments which:

- Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;
- Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;

Enhance the quality, utility and clarity of the information to be collected; and

- Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology

e.g., permitting electronic submissions of responses.

**ADDRESSEE:** Ms. Patricia A. Forkel, U.S. Department of labor, 200 Constitution Ave., N.W., Room S–3201, Washington, D.C. 20210, telephone (202) 219–7601 (this is not a toll-free number), fax 202–219–6592.

**SUPPLEMENTARY INFORMATION:**

Rehabilitation Plan and Award

*I. Background:* The Office of Workers' Compensation Programs (OWCP) administers the Longshore and Harbor Workers' Compensation Act (LSHWCA) and the Federal Employees Compensation Act (FECA). Both of these Acts provide for rehabilitation services to eligible injured workers. This form (OWCP–16) is used to document the plan for rehabilitation services submitted to OWCP by the injured worker and the rehabilitation counselor, and is used by OWCP to award payment from funds provided for rehabilitation. The form summarizes the nature and costs of the rehabilitation program for a prompt decision on funding by OWCP. The signatures of the parties on the form document their collective approval of the plan.

*II. Current Actions:* The Department of Labor seeks the extension of approval to collect this information in order to carry out its responsibility to provide and fund rehabilitation for injured workers.

Rehabilitation Action Report

*I. Background:* The Office of Workers' Compensation administers the Federal Employees' Compensation Act. This Act provides rehabilitation services to eligible injured workers. The cost of these services are paid from the Employees' Compensation Fund. The Rehabilitation Action Report is submitted to OWCP by the rehabilitation counselor and gives prompt notification of key events requiring action in the vocational rehabilitation process.

*II. Current Actions:* The Department of Labor seeks the extension of approval to collect this information in order to carry out its responsibility to provide and fund rehabilitation for injured workers.

Report of Changes That May Affect Your Black Lung Benefits

*I. Background:* The Office of Workers' Compensation Programs Division of Coal Mine Workers' Compensation, provides for the payments of benefits to coal miners who are totally disabled due to pneumonconiosis and to certain survivors of miners who die due to pneumoconiosis. Once a miner or survivor is found eligible for benefits, the primary beneficiary is requested to report certain changes that may affect benefits. Responses to the form (CM–929) are reviewed to verify information in the claim file and to identify changes such as income, marital and dependency status.

*II. Current Actions:* The Department of Labor seeks the extension of approval to collect this information in order to carry out its responsibility to verify and update on a regular basis factors that affect a beneficiary's entitlement to benefits.

Report of Construction Contractor's Wage Rates

*I. Background:* The Wage and Hour Division administers the Davis-Bacon Act. The Act provides, in part, that ''. . . every contract in excess of $2,000 . . . which requires or involves the employment of mechanics and/or laborers shall contain a provision stating the minimum wages to be paid various classes of laborers and mechanics which shall be based upon the wages that will be determined by the Secretary of Labor to be prevailing for the corresponding classes of laborers and mechanics employed on projects of a character similar to the contract work in the city, town, village or other civil subdivision of the State in which the work is performed . . .''

*II. Current Actions:* The Department of Labor seeks the extension of this information collection in order to carry out its responsibility under the Davis-Bacon and Related Acts to determine locally prevailing wage rates.

20 CFR Part 825—The Family and Medical Leave Act of 1993

*I. Background:* The Family and Medical Leave Act of 1993 (FMLA) requires private sector employers of 50 or more employees, and public agencies, to provide up to 12 weeks of unpaid, job-protected leave to eligible employees for certain family and medical reasons. The Act imposes certain recordkeeping and reporting requirements in order for the Department of Labor to determine employer compliance with FMLA.

*II. Current Actions:* The Department of Labor seeks the extension of approval to collect this information in order to ensure that both employers and employees are aware of, and can exercise their rights and meet their respective obligations under FMLA, and to carry out its statutory responsibility to investigate and ensure employer compliance.

Notice of Recurrance of Disability and Claim for Continuation of Pay/Compensation

*I. Background:* The Office of Workers' Compensation Programs administers the Federal Employee's Compensation Act. This statute provides for continuation of pay or compensation for work related injury or disease resulting from Federal employment. This form requests information from claimants with previously accepted injuries who claim a recurrence of disability, and from their supervisors. The form requests information relating to the specific circumstances leading up to the recurrance and employment and earnings information.

*II. Current Actions:* The Department of Labor seeks the extension of approval to collect this information in order to determine if benefits are payable for a recurrence of an injury.

*Type of Review:* Extension.
*Agency:* Employment Standards Administration.
*Title:* Rehabilitation Plan and Award.
*OMB Number:* 1215–0067.
*Agency Number:* OWCP–16.
*Affected Public:* Business or other for-profit; Individuals or households.
*Total Respondents:* 7,000.
*Frequency:* On occasion.
*Total Responses:* 7,000.
*Average Time per Response:* 30 minutes.
*Estimated Total Burden Hours:* 3,500.
*Estimated Total Burden Cost:* $0.

*Type of Review:* Extension.
*Agency:* Employment Standards Administration.
*Title:* Rehabilitation Action Award.
*OMB Number:* 1215–0182.
*Agency Number:* OWCP–44.
*Affected Public:* Businesses or other for-profit; Individuals or households.
*Total Respondents:* 7,000.
*Frequency:* On occasion.
*Total Responses:* 7,000.
*Average Time per Response:* 30 minutes.
*Estimated Total Burden Hours:* 3,500.
*Estimated Total Burden Cost:* 0.

*Type of Review:* Extension.
*Agency:* Employment Standards Administration.
*Title:* Report of Changes That May Affect Your Black Lung Benefits.
*OMB Number:* 1215–0084.
*Agency Number:* CM–929.
*Affected Public:* Individuals or households.
*Total Respondents:* 35,000.
*Frequency:* Biennially.
*Total Responses:* 35,000.
*Average Time per Response:* 5 to 8 minutes.
*Estimated Total Burden Hours:* 3,092.

*Estimated Total Burden Cost:* 0.

*Type of Review:* Extension.

*Agency:* Employment Standards Administration.

*Title:* Report of Construction Contractor's Wage Rates.

*OMB Number:* 1215–0046.

*Agency Number:* WD–10.

*Affected Public:* Businesses or other for-profit.

*Total Respondents:* 37,500.

*Frequency:* On occasion.

*Total Responses:* 75,000.

*Average Time per Response:* 20 minutes.

*Estimated Total Burden Hours:* 25,000.

*Estimated Total Burden Cost:* 0.

*Type of Review:* Extension.

*Agency:* Employment Standards Administration.

*Title:* 29 CFR Part 285—The Family and Medical Leave Act of 1993.

*OMB Number:* 1215–0181.

*Agency Number:* WH–380 and WH–381.

*Recordkeeping:* 3 years.

*Affected Public:* Individuals or households, Businesses or other For-Profit, Not-for-profit institutions, Farms, State, local or Tribal Government.

*Total Respondents:* 3.9 million.

*Frequency:* Recordkeeping; Reporting On occasion.

*Total Responses:* 9.1425 million.

*Average Time per Response:* 10 minutes.

*Estimated Total Burden Hours:* 645,625.

*Estimated Total Burden Cost:* $0.

*Type of Review:* Extension.

*Agency:* Employment Standards Administration.

*Title:* Notice of Recurrance of Disability and Claim for Continuation of Pay/Compensation.

*OMB Number:* 1215–0167.

*Agency Number:* CA–2a.

*Affected Public:* Individuals or households.

*Total Respondents:* 550.

*Frequency:* Once per recurrance of injury.

*Total Responses:* 550.

*Average Time per Response:* 30 minutes.

*Estimated Total Burden Hours:* 275.

*Estimated Total Burden Cost:* $176.

Comments submitted in response to this notice will be summarized and/or included in the request for Office of Management and Budget approval of the information collection request; they will also become a matter of public record.

Dated: February 23, 1996.

Cecily A. Rayburn,

*Chief, Division of Financial Management, Office of Management, Administration and Planning, Employment Standards Administration.*

[FR Doc. 96–4614 Filed 2–28–96; 8:45 am]

**BILLING CODE 4510–27–M**

## NUCLEAR REGULATORY COMMISSION

### Documents Containing Reporting or Recordkeeping Requirements: Office of Management and Budget (OMB) Review

**AGENCY:** U. S. Nuclear Regulatory Commission (NRC).

**ACTION:** Notice of the OMB review of information collection and solicitation of public comment. The NRC hereby informs potential respondents that an agency may not conduct or sponsor, and that a person is not required to respond to, a collection of information unless it displays a currently valid OMB control number.

**SUMMARY:** The NRC has recently submitted to OMB for review the following proposal for the collection of information under the provisions of the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35).

*1. Type of submission, new, revision, or extension:* Extension.

*2. The title of the information collection:* 10 CFR Part 36, Licenses and Radiation Safety Requirements for Irradiators.

*3. The form number if applicable:* Not applicable .

*4. How often the collection is required:* There is a one-time submittal of information to receive a license. Once a specific license has been issued, there is a 5-year resubmittal of the information for renewal of the license. In addition, recordkeeping must be performed on an on-going basis, and reports of accidents and other abnormal events must be reported on an as-necessary basis.

*5. Who will be required or asked to report:* All irradiators licensed by NRC or an Agreement State

*6. An estimate of the number of responses:* 15 reports per year.

7. The estimated number of annual respondents: 60 NRC licensees and 120 Agreement State licensees

*8. An estimate of the total number of hours needed annually to complete the requirement or request:* 84,030 hours (1500 hours for reporting requirements and 82,530 hours for recordkeeping requirements)

*9. An indication of whether Section 3507(d), Pub. L. 104–13 applies:* Not applicable.

*10. Abstract:* 10 CFR Part 36 contains mandatory requirements for the issuance of a license authorizing the use of sealed sources containing radioactive materials in irradiators used to irradiate objects or materials for a variety of purposes in research, industry, and other fields. The subparts cover specific requirements for obtaining a license or license exemption; design and performance criteria for irradiators; and radiation safety requirements for operating irradiators, including requirements for operator training, written operating and emergency procedures, personnel monitoring, radiation surveys, inspection, and maintenance. 10 CFR Part 36 also contains the recordkeeping and reporting requirements that are necessary to ensure that the irradiator is being safely operated so that it poses no danger to the health and safety of the general public and the irradiator employees.

A copy of the submittal may be viewed free of charge at the NRC Public Document Room, 2120 L Street, NW (Lower Level), Washington, DC. Members of the public who are in the Washington, DC, area can access the submittal via modem on the Public Document Room Bulletin Board (NRC's Advance Copy Document Library) NRC subsystem at FedWorld, 703–321–3339. Members of the public who are located outside of the Washington, DC, area can dial FedWorld, 1–800–303–9672, or use the FedWorld Internet address: fedworld.gov (Telnet). The document will be available on the bulletin board for 30 days after the signature date of this notice. If assistance is needed in accessing the document, please contact the FedWorld help desk at 703–487–4608. Comments and questions should be directed to the OMB reviewer by April 1, 1996: Troy Hillier, Office of Information and Regulatory Affairs (3150–0158), NEOB–10202, Office of Management and Budget, Washington, DC 20503.

Comments can also be submitted by telephone at (202) 395–3084.

The NRC Clearance Officer is Brenda Jo. Shelton, (301) 415–7233.

Dated at Rockville, Maryland, this 21st day of February 1996.

For the Nuclear Regulatory Commission.

Gerald F. Cranford,

*Designated Senior Official for Information Resources Management.*

[FR Doc. 96–4681 Filed 2–28–96; 8:45 am]

**BILLING CODE 7590–01–P**

**[Docket No. 50–440]**

## The Cleveland Electric Illuminating Company, Et Al.; Notice of Consideration of Issuance of Amendment to Facility Operating License, Proposed no Significant Hazards Consideration Determination, and Opportunity for a Hearing

The U.S. Nuclear Regulatory Commission (the Commission) is considering issuance of an amendment to Facility Operating License No. NPF–58, issued to The Cleveland Electric Illuminating Company, et al. (the licensee), for operation of the Perry Nuclear Power Plant, Unit 1, located in Lake County, Ohio.

The proposed amendment would revise the Technical Specifications (TS) to allow one main steam line's leakage rate to be as high as 35 standard cubic feet per hour (scfh) as long as the total leakage rate through all four main steam lines does not exceed 100 scfh until the end of Operating Cycle 6.

The need for a change to the main steam line leakage rate limits became apparent on February 11, 1996, during surveillance testing of the main steam lines. The ''C'' main steam line was found to exceed the TS limit of 25 scfh by 3.1 scfh. However, the total of all four main steam lines was less than 100 scfh. Repair of the responsible valve to reduce the leakage below 25 scfh would provide no significant benefit to safety, while involving an estimated 2 person-REM of radiation exposure and an estimated 2200 person-hours of work. Plant startup from the current refueling outage is scheduled for March 27, 1996. Therefore, the license amendment is needed prior to that date to avoid delaying plant startup. The request was submitted in a timely fashion since discovery that the ''C'' main steam line exceeded the leakage rate limits, and the circumstances could not have been avoided.

Pursuant to 10 CFR 50.91(a)(6) for amendments to be granted under exigent circumstances, the NRC staff must determine that the amendment request involves no significant hazards consideration. Under the Commission's regulations in 10 CFR 50.92, this means that operation of the facility in accordance with the proposed amendment would not (1) involve a significant increase in the probability or consequences of an accident previously evaluated; or (2) create the possibility of a new or different kind of accident from any accident previously evaluated; or (3) involve a significant reduction in a margin of safety. As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

1. The proposed change does not involve a significant increase in the probability or consequences of an accident previously evaluated. The proposed TS change requests a relaxation of the leakage rate requirements for one main steam line while preserving the overall leakage rate limit for the main steam line penetrations. The proposed leakage rate limit is well below any steam line leakage rate that is used as an accident assumption, and the proposed change would not increase the probability that a steam line rupture would occur. Therefore, the probability of an accident previously evaluated has not changed. In addition, the proposed overall leakage rate limit is the leakage rate limit used in the accident analysis, and that limit is not being changed by this proposal. Therefore, the proposed change does not increase the consequences of an accident previously evaluated.

2. The proposed change would not create the possibility of a new or different kind of accident from any previously evaluated. The proposed change increases the allowable leakage rate for one main steam line, without changing the combined leakage rate for the four main steam lines. This request does not change the method for operation of the plant. Thus the requested change cannot create the possibility of a new or different kind of accident from any previously evaluated.

3. The proposed change will not involve a significant reduction in the margin of safety. The proposed change does not revise the overall leakage rate permitted in the present Specifications for leakage through the main steam lines. An increase in the leakage rate of any one main steam line is not considered in any accident analysis. It is the combined main steam line penetration leakage rate that is assumed in the accident analysis. Thus, since this assumed leakage rate is not being revised, the proposed change does not involve a significant reduction in the margin of safety.

Before issuance of the proposed license amendment, the Commission will have made findings required by the Atomic Energy Act of 1954, as amended (the Act) and the Commission's regulations.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

The Commission is seeking public comments on this proposed determination. Any comments received within 15 days after the date of publication of this notice will be considered in making any final determination.

Normally, the Commission will not issue the amendment until the expiration of the 15-day notice period. However, should circumstances change during the notice period, such that failure to act in a timely way would result, for example, in derating or shutdown of the facility, the Commission may issue the license amendment before the expiration of the 15-day notice period, provided that its final determination is that the amendment involves no significant hazards consideration. The final determination will consider all public and State comments received. Should the Commission take this action, it will publish in the Federal Register a notice of issuance. The Commission expects that the need to take this action will occur very infrequently.

Written comments may be submitted by mail to the Rules Review and Directives Branch, Division of Freedom of Information and Publications Services, Office of Administration, U.S. Nuclear Regulatory Commission, Washington, DC 20555, and should cite the publication date and page number of this Federal Register notice. Written comments may also be delivered to Room 6D22, Two White Flint North, 11545 Rockville Pike, Rockville, Maryland, from 7:30 a.m. to 4:15 p.m. Federal workdays. Copies of written comments received may be examined at the NRC Public Document Room, the Gelman Building, 2120 L Street, NW., Washington, DC.

The filing of requests for hearing and petitions for leave to intervene is discussed below.

By April 1, 1996, the licensee may file a request for a hearing with respect to issuance of the amendment to the subject facility operating license and any person whose interest may be affected by this proceeding and who wishes to participate as a party in the proceeding must file a written request for a hearing and a petition for leave to intervene. Requests for a hearing and a petition for leave to intervene shall be filed in accordance with the Commission's ''Rules of Practice for Domestic Licensing Proceedings'' in 10 CFR Part 2. Interested persons should consult a current copy of 10 CFR 2.714 which is available at the Commission's Public Document Room, the Gelman Building, 2120 L Street, NW., Washington, DC, and at the local public document room located at the Perry Public Library, 3753 Main Street, Perry, Ohio. If a request for a hearing or petition for leave to intervene is filed by the above date, the Commission or an Atomic Safety and Licensing Board, designated by the Commission or by the Chairman of the Atomic Safety and Licensing Board Panel, will rule on the

request and/or petition; and the Secretary or the designated Atomic Safety and Licensing Board will issue a notice of hearing or an appropriate order.

As required by 10 CFR 2.714, a petition for leave to intervene shall set forth with particularity the interest of the petitioner in the proceeding, and how that interest may be affected by the results of the proceeding. The petition should specifically explain the reasons why intervention should be permitted with particular reference to the following factors: (1) the nature of the petitioner's right under the Act to be made a party to the proceeding; (2) the nature and extent of the petitioner's property, financial, or other interest in the proceeding; and (3) the possible effect of any order which may be entered in the proceeding on the petitioner's interest. The petition should also identify the specific aspect(s) of the subject matter of the proceeding as to which petitioner wishes to intervene. Any person who has filed a petition for leave to intervene or who has been admitted as a party may amend the petition without requesting leave of the Board up to 15 days prior to the first prehearing conference scheduled in the proceeding, but such an amended petition must satisfy the specificity requirements described above.

Not later than 15 days prior to the first prehearing conference scheduled in the proceeding, a petitioner shall file a supplement to the petition to intervene which must include a list of the contentions which are sought to be litigated in the matter. Each contention must consist of a specific statement of the issue of law or fact to be raised or controverted. In addition, the petitioner shall provide a brief explanation of the bases of the contention and a concise statement of the alleged facts or expert opinion which support the contention and on which the petitioner intends to rely in proving the contention at the hearing. The petitioner must also provide references to those specific sources and documents of which the petitioner is aware and on which the petitioner intends to rely to establish those facts or expert opinion. Petitioner must provide sufficient information to show that a genuine dispute exists with the applicant on a material issue of law or fact. Contentions shall be limited to matters within the scope of the amendment under consideration. The contention must be one which, if proven, would entitle the petitioner to relief. A petitioner who fails to file such a supplement which satisfies these requirements with respect to at least one contention will not be permitted to participate as a party.

Those permitted to intervene become parties to the proceeding, subject to any limitations in the order granting leave to intervene, and have the opportunity to participate fully in the conduct of the hearing, including the opportunity to present evidence and cross-examine witnesses.

If the amendment is issued before the expiration of the 30-day hearing period, the Commission will make a final determination on the issue of no significant hazards consideration. If a hearing is requested, the final determination will serve to decide when the hearing is held.

If the final determination is that the amendment request involves no significant hazards consideration, the Commission may issue the amendment and make it immediately effective, notwithstanding the request for a hearing. Any hearing held would take place after issuance of the amendment.

If the final determination is that the amendment request involves a significant hazards consideration, any hearing held would take place before the issuance of any amendment.

A request for a hearing or a petition for leave to intervene must be filed with the Secretary of the Commission, U.S. Nuclear Regulatory Commission, Washington, DC 20555, Attention: Docketing and Services Branch, or may be delivered to the Commission's Public Document Room, the Gelman Building, 2120 L Street, NW., Washington, DC, by the above date. Where petitions are filed during the last 10 days of the notice period, it is requested that the petitioner promptly so inform the Commission by a toll-free telephone call to Western Union at 1–(800) 248–5100 (in Missouri 1–(800) 342–6700). The Western Union operator should be given Datagram Identification Number N1023 and the following message addressed to Gail H. Marcus: petitioner's name and telephone number, date petition was mailed, plant name, and publication date and page number of this Federal Register notice. A copy of the petition should also be sent to the Office of the General Counsel, U.S. Nuclear Regulatory Commission, Washington, DC 20555, and to Jay E. Silberg, Shaw, Pittman, Potts & Trowbridge, 2300 N Street, NW., Washington, DC 20037, attorney for the licensee.

Nontimely filings of petitions for leave to intervene, amended petitions, supplemental petitions and/or requests for hearing will not be entertained absent a determination by the Commission, the presiding officer or the presiding Atomic Safety and Licensing Board that the petition and/or request should be granted based upon a balancing of the factors specified in 10 CFR 2.714(a)(1)(i)–(v) and 2.714(d).

For further details with respect to this action, see the application for amendment dated February 17, 1996, which is available for public inspection at the Commission's Public Document Room, the Gelman Building, 2120 L Street, NW., Washington, DC, and at the local public document room, located at the Perry Public Library, 3753 Main Street, Perry, Ohio.

Dated at Rockville, Maryland, this 23rd day of February 1996.

For the Nuclear Regulatory Commission.

Jon B. Hopkins,

*Senior Project Manager, Project Directorate III–3, Division of Reactor Projects–III/IV, Office of Nuclear Reactor Regulation.*

[FR Doc. 96–4684 Filed 2–28–96; 8:45 am]

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**[Docket No. 50–309]**

## Maine Yankee Atomic Power Company, Maine Yankee Atomic Power Station; Environmental Assessment and Finding of No Significant Impact

The U.S. Nuclear Regulatory Commission (the Commission) is considering issuance of an amendment to Facility Operating License No. DPR–36, issued to Maine Yankee Atomic Power Company (the licensee), for operation of Maine Yankee Atomic Power Station, located in Lincoln County, Maine.

Environmental Assessment

*Identification of the Proposed Action*

The proposed amendment would allow the use of fuel having an initial composition of natural or slightly enriched uranium dioxide as fuel material, consistent with the limitation of NUREG–1432, ''Standard Technical Specifications for Combustion Engineering Plants.'' Currently, Maine Yankee Technical Specification (TS) 1.3.A, Reactor Core, specifies ''The maximum as-fabricated radially-averaged enrichment of any axial enrichment zone within a fuel assembly shall be 3.95 weight percent U–235.'' The proposed action is in accordance with the licensee's application for amendment dated August 30, 1995, as supplemented by letter dated January 15, 1996.

*The Need for the Proposed Action*

The proposed amendment is needed so that the licensee may use fuel having a higher enrichment than currently allowed by its license. Higher

enrichment fuel would allow extended fuel irradiation and thus achieve longer fuel cycles in the future.

*Environmental Impacts of the Proposed Action*

The Commission has completed its evaluation of the proposed revision to the TS. The proposed revision would allow the use of fuel having an initial composition of natural or slightly enriched uranium dioxide as fuel material, consistent with the limitation of NUREG–1432, ''Standard Technical Specifications for Combustion Engineering Plants.'' In effect, the fuel would be limited to a maximum uranium–235 enrichment of 4.5 weight percent, as specified in TS 4.3.1.1 and 4.3.1.2, relating to the spent fuel pool limits for storing new and spent fuel. The safety considerations associated with the use of such fuel have been evaluated by the NRC staff. The staff has concluded that such a change would not adversely affect plant safety. The proposed change has no adverse effect on the probability of any accident. No change is being made in the types or amounts of any radiological effluents that may be released offsite. There is no significant increase in the allowable individual or cumulative occupational radiation exposure.

The environmental impacts of transportation resulting from the use of higher enrichment fuel and extended irradiation (an enveloping case for the Maine Yankee Atomic Power Station, because fuel burnup remains unchanged) were published and discussed in the staff assessment titled, ''NRC Assessment of the Environmental Effects of Transportation Resulting from Extended Fuel Enrichment and Irradiation,'' dated July 7, 1988, and published in the Federal Register on August 11, 1988 (53 FR 30355), as corrected on August 24, 1988 (53 FR 32322), in connection with Shearon Harris Nuclear Power Plant Unit 1: Environmental Assessment and Finding of No Significant Impact. As indicated therein, the environmental cost contribution of the proposed increase in the fuel enrichment and irradiation limits are either unchanged or may, in fact, be reduced from those summarized in Summary Table S–4 of 10 CFR 51.52(c). Accordingly, the Commission concludes that there are no significant radiological environmental impacts associated with the proposed amendment.

With regard to potential nonradiological impacts of reactor operation with higher enrichment, the proposed action involves features located entirely within the restricted area as defined in 10 CFR Part 20. The proposed action does not affect nonradiological plant effluents and has no other environmental impact. Accordingly, the Commission concludes that there are no significant nonradiological environmental impacts associated with the proposed action.

*Alternatives to the Proposed Action*

Since the Commission has concluded there is no measurable environmental impact associated with the proposed action, any alternatives with equal or greater environmental impact need not be evaluated. As an alternative to the proposed action, the staff considered denial of the proposed action. Denial of the application would result in no change in current environmental impacts. The environmental impacts of the proposed action and the alternative action are similar.

*Alternative Use of Resources*

This action does not involve the use of any resources not previously considered in the Final Environmental Statement for Maine Yankee Atomic Power Station.

*Agencies and Persons Consulted*

In accordance with its stated policy, on October 26, 1995, the staff consulted with the Maine State official, Mr. Patrick J. Dostie of the Department of Human Services, regarding the environmental impact of the proposed action. The State official had no comments.

Finding of No Significant Impact

Based upon the environmental assessment, the Commission concludes that the proposed action will not have a significant effect on the quality of the human environment. Accordingly, the Commission has determined not to prepare an environmental impact statement for the proposed action.

For further details with respect to the proposed action, see the licensee's letters dated August 30, 1995, and January 15, 1996, which are available for public inspection at the Commission's Public Document Room, The Gelman Building, 2120 L Street, NW, Washington, DC, and at the local public document room located at the Wiscasset Public Library, High Street, P.O. Box 367, Wiscasset, ME 04578.

Dated at Rockville, Maryland, this 21st day of February 1996.

For the Nuclear Regulatory Commission.

John A. Zwolinski,

*Deputy Director, Division of Reactor Projects—I/II, Office of Nuclear Reactor Regulation.*

[FR Doc. 96–4682 Filed 2–28–96; 8:45 am]

BILLING CODE 7590–01–P

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**[Docket No. 50–336]**

## Northeast Nuclear Energy Company; Correction

The February 14, 1996, Federal Register contained a ''Notice of Consideration of Issuance of Amendment to Facility Operating License, Proposed No Significant Hazards Consideration Determination, and Opportunity for a Hearing,'' for the Millstone Nuclear Power Station, Unit No. 2. This notice corrects the notice published in the Federal Register on February 14, 1996, (61 FR 5816). The ''Date of amendment request: January 26, 1996'' is corrected to January 16, 1996.

Dated at Rockville, Maryland, this 22nd day of February 1996.

For the Nuclear Regulatory Commission.

Guy S. Vissing,

*Senior Project Manager, Northeast Utilities Project Directorate, Division of Reactor Projects—I/II, Office of Nuclear Reactor Regulation.*

[FR Doc. 96–4685 Filed 2–28–96; 8:45 am]

BILLING CODE 7590–01–P

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**[Docket No. 50–029]**

## Yankee Atomic Electric Company (License No. DPR–3); Issuance of Director's Decision Under 10 CFR 2.206

Notice is hereby given that the Director, Office of Nuclear Reactor Regulation, has taken action with respect to a Petition, dated January 17, 1996, by Citizens Awareness Network and New England Coalition on Nuclear Pollution (Petitioners). The Petitioners requested that the Nuclear Regulatory Commission (NRC) take action with regard to operation by Yankee Atomic Energy Company (YAEC or Licensee) of its Nuclear Power Station at Rowe, Massachusetts (Yankee Rowe).

Petitioners requested that the NRC comply with *Citizens Awareness Network Inc.* v. *United States Nuclear Regulatory Commission and Yankee Atomic Electric Company*, 59 F.3d 284 (1st Cir. 1995) (*CAN* v. *NRC*). Specifically, Petitioners requested that the Commission immediately order:

(1) YAEC not to undertake, and the NRC staff not to approve, further major

dismantling activities or other decommissioning activities, unless such activities are necessary to assure the protection of occupational and public health and safety; (2) YAEC to cease any such activities; and (3) NRC Region I to reinspect Yankee Rowe to determine whether there has been compliance with the Commission's Order of October 12, 1995 (CLI–95–14), and to issue a report within ten days of the requested order to Region I.

The Petitioners' request for emergency action to cease decommissioning activities was mooted in part by the Licensee's completion of activities evaluated by the NRC staff in a letter of November 2, 1995 to the licensee. Even if these activities have not been completed, they would have been permissible under the Commission's pre-1993 interpretation of its decommissioning regulations. By letter dated February 2, 1996, Petitioners' request that shipments of low-level radioactive be prohibited was denied, and Petitioners' request for reinspection of the Yankee Rowe facility to determine compliance with CLI–94–14 and to issue an inspection report was granted. The Director has determined to be moot the request that four other activities be prohibited. Additionally, he has granted the request for inspection of Yankee Rowe to determine compliance with CLI–95–14 and to issue an inspection report. The reasons for these decisions are explained in the ''Director's Decision Pursuant to 10 CFR 2.206'' (DD–96–01), the complete text of which follows this notice and is available for public inspection at the Commission's Public Document Room, the Gelman Building, 2120 L Street, NW., Washington, DC, and at the local public document room located at the Greenfield Community College Library, 1 College Drive, Greenfield, Massachusetts, 01301.

A copy of the Decision will be filed with the Secretary of the Commission for the Commission's review in accordance with 10 CFR 2.206(c) of the Commission's regulations. As provided by this regulation, the Decision will constitute the final action of the Commission 25 days after the date of issuance unless the Commission, on its own motion, institutes a review of the Decision in that time.

Dated at Rockville, Maryland, this 22nd day of February 1996.

For the Nuclear Regulatory Commission.

William T. Russell,

*Director, Office of Nuclear Reactor Regulation.*

## Appendix A to This Document: Director's Decision Under 10 CFR 2.206; Yankee Atomic Electric Company

### *I. Introduction*

An ''EMERGENCY MOTION FOR COMPLIANCE WITH CIRCUIT COURT OPINION'' (Petition), dated January 17, 1996, was submitted by Citizens Awareness Network and New England Coalition on Nuclear Pollution (Petitioners). Petitioners requested that the United States Nuclear Regulatory Commission (NRC or Commission) take action with respect to activities conducted by Yankee Atomic Electric Company (YAEC or Licensee) at the Yankee Nuclear Power Station in Rowe, Massachusetts (Yankee Rowe or the facility).

By an Order of the Commission dated January 23, 1996, the Emergency Motion was referred to the NRC staff for treatment as a petition pursuant to 10 CFR 2.206 of the Commission's regulations. The Commission ordered the staff to respond to the emergency aspects of the Petition in 10 days and to issue a decision on the Petition as a whole within 30 days.

Petitioners request that the NRC comply with *Citizens Awareness Network Inc.* v. *United States Nuclear Regulatory Commission and Yankee Atomic Electric Company,* 59 F.3d 284 (1st Cir. 1995) (*CAN* v. *NRC*). Specifically, Petitioners request that the Commission immediately order:

(A) YAEC not to undertake, and the NRC staff not to approve, further major dismantling activities or other decommissioning activities, unless such activities are necessary to assure the protection of occupational and public health and safety;

(B) YAEC to cease any such activities; and

(C) NRC Region I to reinspect the Yankee Nuclear Power Station in Rowe, Massachusetts (Yankee Rowe) to determine whether there has been compliance with the Commission's Order of October 12, 1995 (CLI–95–14), and to issue a report within ten days of the requested order to Region I.

As the bases for their requests, Petitioners state that:

(1) *CAN* v. *NRC* requires the cessation, and prohibits commencement, of decommissioning activities at Yankee Rowe, pending final approval of the licensee's decommissioning plan after opportunity for a hearing. CLI–95–14 forbids YAEC from conducting any further major dismantling or decommissioning activities until final approval of its decommissioning plan after completion of the hearing process;

(2) *CAN* v. *NRC* obliges the Commission and the staff to provide an opportunity to interested persons for a hearing to approve a decommissioning plan;

(3) *CAN* v. *NRC* requires the Commission to reinstate its pre-1993 interpretation of its decommissioning regulations, *General Requirements for Decommissioning Nuclear Facilities,* 53 FR 24,018, 24,025–26 (June 27, 1988), limiting the scope of permissible activities prior to approval of a decommissioning plan to decontamination, minor component disassembly, and shipment and storage of spent fuel, if permitted by the operating license and/or 10 CFR § 50.59. Under *Long Island Lighting Co.* (Shoreham Nuclear Power Station, Unit 1), CLI–90–08, 32 NRC 201, 207, n.3 (1990), this means that the licensee may not take any action that would materially affect the methods or options available for decommissioning, or that would substantially increase the costs of decommissioning, prior to approval of a decommissioning plan. Under CLI–91–2, 33 NRC at 73, n.5, and CLI–92–2, 35 NRC at 61, n.7, other decommissioning activities, in addition to major ones, are prohibited, including offsite shipments of low-level radioactive waste produced by decommissioning activities, until after approval of a decommissioning plan;

(4) Decommissioning activities permitted by NRC Inspection Manual, Chapter 2561, § 06.06, ''Modifications or Changes to the Facility'', before approval of a decommissioning plan are limited to maintenance, removal of relatively small radioactive components or non-radioactive components, and characterization of the plant or site;

(5) YAEC is conducting decommissioning activities, with the approval of the NRC technical staff, in flagrant violation of *CAN* v. *NRC* and of CLI–95–14, thus threatening to render the decommissioning process nugatory and to deprive Petitioners of their hearing rights under Section 189a of the Atomic Energy Act;

(6) By letter dated October 19, 1995, YAEC described nine decommissioning activities in progress, and by letter dated October 24, 1995, interpreted permissible ''major'' dismantling as removal of non-radioactive material required to support safe storage of spent fuel and of those portions of the facilities which remain, or to support future dismantlement;

(7) By letter dated November 2, 1995, the NRC staff approved the activities described by the Licensee in its letter of October 19, 1995;

(8) Five of the nine activities approved by the NRC staff's letter of November 2, 1995, are major dismantling or other decommissioning activities, in the nature of Component Removal Project activities, prohibited, until after approval of a decommissioning plan, by *CAN* v. *NRC* and CLI–95–14. Petitioners object to: (a) Completing removal of the remainder of the Upper Neutron Shield Tank; (b) removal of Component Cooling Water System pipes and components and Spent Fuel Cooling System pipes and components; (c) Fuel Chute isolation; (d) Spent Fuel Pool electrical conduit installation; and (e) radioactive waste shipments. Petitioners do not object to Waste Tank removal, Ion Exchange Pit clean-up, removal of Emergency Diesel Generators, or the Brookhaven National Laboratory Cable Sampling Project.

(9) Petitioners advocate the SAFSTOR decommissioning alternative because it allows levels of radioactivity and waste volumes to decrease, thus reducing

occupational and public radiation exposures, and lowering decommissioning costs;

(10) NRC Inspection Report No. 50–29/95–05 (December 16, 1995) concludes that the issue whether activities observed were in compliance with CLI–95–14 is unresolved, but approves YAEC's proposed activities, contrary to the requirements of NRC Inspection Manual, Chapter 2561, § 06.06, ''Modifications or Changes to the Facility'' (March 20, 1992); and

(11) YAEC's criterion for permissible decommissioning activities, that any activity involving less than 1 percent of the on-site radioactive inventory is not ''major'' and may take place before approval of a decommissioning plan, violates *CAN* v. *NRC* because it would allow completion of decommissioning before any decommissioning plan could be approved in hearing, and constitutes unlawful segmentation under the National Environmental Policy Act.

By letter dated January 29, 1996, Yankee Atomic Electric Company responded to the Petition. YAEC supplemented its response by letters dated February 15, 1996, February 21, 1996, and February 22, 1996, and by an E-mail message to the NRC staff on January 31, 1996.

By letter dated February 2, 1996, the NRC staff denied in part and granted in part Petitioners' requests for emergency action. The Petition was also found moot in part. Petitioners' requests that the NRC take emergency action to order (A) YAEC not to undertake and the NRC staff not to approve further major dismantling activities or other decommissioning activities, unless necessary to assure the protection of occupational and public health and safety and (B) YAEC to cease any such activities were found moot in part and denied in part. Petitioners' request for emergency action to require NRC Region I to reinspect Yankee Rowe to determine whether YAEC has complied with the Commission's Order of October 12, 1995 (CLI–95–14), and to issue a report within ten days after the Commission orders such an inspection, was granted.

Petitioners then requested the Commission to reverse the NRC staff's February 2, 1996, decision on the emergency aspects of the Petition. See ''Citizens Awareness Network's and New England Coalition on Nuclear Pollution's Motion for Exercise of Plenary Commission Authority to Reverse NRC Staff 2.206 Decision, and Renewed Emergency Request for Compliance with Circuit Court Opinion.'' By Order dated February 15, 1996, the Commission declined to grant the emergency relief requested, as there was no showing that the Licensee would take any action before the issuance of a Director's Decision on February 22, 1996. The Commission directed the NRC staff to address the arguments advanced by Petitioners in their February 9 motion in this Decision, with the exception of the new issues raised on page 13 of the Motion, which are to be addressed in a supplementary 10 CFR § 2.206 decision.

For the reasons discussed below, Petitioners' requests that the NRC prohibit YAEC from undertaking or continuing five of the nine activities evaluated by the NRC staff's letter of November 2, 1995, are moot in part and denied in part. Of the nine activities, all with the exception of radioactive waste shipments were completed before submission of the January 17, 1996, Petition. Accordingly, Petitioners' request for relief with respect to: (1) Completing removal of the remainder of the Upper Neutron Shield Tank; (2) removal of the Component Cooling Water System pipes and components and Spent Fuel Cooling System pipes and components; (3) Fuel Chute isolation; and (4) Spent Fuel Pool electrical conduit installation is moot. Petitioners' request for relief with respect to radioactive waste shipments is denied. As explained below, all five contested activities were permissible, before approval of a decommissioning plan, under the pre-1993 interpretation of the Commission's decommissioning regulations, and thus are in compliance with CAN v. NRC and CLI–95–14. Petitioners' request that the NRC inspect Yankee Rowe to determine compliance with CLI–95–14, and issue an inspection report, was granted.

*II. Background*

On February 27, 1992, YAEC announced its intention to cease operations permanently at Yankee Rowe. On August 5, 1992, the NRC issued a license amendment to limit the license to a Possession-Only-License. 57 FR 37558, 37579 (Aug. 19, 1992).

In late 1992, YAEC proposed to initiate a Component Removal Project (CRP). On December 20, 1993, YAEC submitted a decommissioning plan based on a phased approach, starting with DECON, then SAFSTOR, and then finally dismantlement. Notice of Receipt of Decommissioning Plan and Request for Comments was published in the Federal Register. (59 FR 14689 on March 29, 1994).

On January 14, 1993, and on June 30, 1993, the Commission issued two Staff Requirements Memoranda which, in pertinent part, interpreted the Commission's regulations to permit many decommissioning activities prior to approval of a decommissioning plan, as long as the activities do not violate the terms of the existing license or 10 CFR § 50.59 with certain additional restrictions. See ''Staff Requirements—Briefing by OGC on Regulatory Issues and Options for Decommissioning Proceedings (SECY–92–382), 10:00 A.M., Tuesday, November 24, 1992, Commissioner's Conference Room, One White Flint North, Rockville, Maryland (Open to Public Attendance)'' (January 14, 1993) and ''SECY–92–382–Decommissioning—Lessons Learned'' (June 30, 1993).

On several occasions between late 1992 and early 1994, CAN asked the NRC to offer an opportunity for an administrative hearing regarding decommissioning activities conducted by YAEC at Yankee Rowe. The Commission denied each such request. CAN sought judicial review and challenged the denials and the January 14, 1993, interpretation of the Commission's decommissioning regulations.

On July 20, 1995, the United States Court of Appeals held that the Commission had: (1) Failed to provide an opportunity for hearing to CAN, as required by Section 189 of the Atomic Energy Act, in connection with the Commission's decision to permit the CRP decommissioning activities; (2) changed its pre-1993 interpretation of its decommissioning regulations without notice to the public and in violation of the Administrative Procedure Act; and (3) impermissibly allowed the licensee to conduct CRP decommissioning activities prior to compliance with the National Environmental Policy Act requirement to conduct an environmental analysis or environmental impact statement. *Citizens Awareness Network* v. *NRC and Yankee Atomic Electric Company,* 59 F. 3d 284, 291–2, 292–3, and 294–5 (1st Cir. 1995). The court remanded the matter to the Commission for proceedings consistent with the court's opinion.

In response, the Commission issued a Federal Register notice advising: (1) That the Commission did not intend to seek further review of CAN v. NRC; (2) that the Commission understood that decision to require a return to the interpretation of NRC decommissioning regulations that was in effect prior to January 14, 1993; and (3) that the Commission was requesting public comments on whether the Commission should order YAEC to cease ongoing decommissioning activities pending any required hearings and any other matters connected with that issue. See 60 FR 46,317 (September 6, 1995).

After consideration of comments filed in response to that notice, the Commission implemented *CAN* v. *NRC* by issuing Yankee Atomic Electric Company (Yankee Nuclear Power Station), CLI–95–14, 42 NRC 130 (1995). In CLI–95–14, the Commission reinstated its pre-1993 interpretation of its decommissioning policy, required the issuance of a notice of opportunity for an adjudicatory hearing on the Yankee Rowe decommissioning plan, held that YAEC may not conduct further ''major'' decommissioning activities at Yankee Rowe until approval of a decommissioning plan after completion of any required hearing, and directed YAEC to inform the Commission within 14 days of the steps it is taking to come into compliance with the reinstated interpretation of the Commission's decommissioning regulations. Yankee Atomic Electric Company, CLI–95–14, 42 NRC 130 (1995).

Pursuant to CLI–95–14, a proceeding is now underway to offer an opportunity for hearing on the Licensee's decommissioning plan for Yankee Rowe. Petitioners have sought intervention and a hearing.

As of July 20, 1995, when the court issued *CAN* v. *NRC,* YAEC had completed its Component Removal Project. In response to CLI–95–14, by letters dated October 19 and 24, 1995, YAEC identified nine ongoing activities which YAEC believed were permissible under *CAN* v. *NRC* and CLI–95–14.

In its letter of November 2, 1995, the NRC staff evaluated those nine activities and found them permissible under the Commission's pre-1993 interpretation of its decommissioning regulations, and thus under *CAN* v. *NRC* and CLI–95–14. The staff

also identified certain activities, although not proposed by the Licensee, which may not be conducted before reapproval of a decommissioning plan. Those activities include dismantlement of systems such as the main reactor coolant system, the lower neutron shield tank, vessels that have significant radiological contamination, pipes, pumps and other such components and the vapor container (containment). The staff also identified segmentation or removal of the reactor vessel from its support structure as a major dismantlement not to be conducted until after the decommissioning plan is reapproved.

*III. Discussion*

A. The nine activities were permissible, prior to approval of a decommissioning plan, under the Commission's pre-1993 interpretation of its decommissioning regulations, and thus are permissible under *CAN* v. *NRC* and CLI–95–14.

Petitioners contend that five of the nine activities evaluated by the NRC staff's letter of November 2, 1995, are major dismantling or other decommissioning activities prohibited until after approval of a decommissioning plan, by *CAN* v. *NRC* and CLI–95–14. Specifically, Petitioners object to: (1) Completing removal of the remainder of the Upper Neutron Shield Tank; (2) removal of Component Cooling Water System pipes and components and Spent Fuel Cooling System pipes and components; (3) Fuel Chute isolation; (4) Spent Fuel Pool electrical conduit installation; and (5) radioactive waste shipments. Petitioners do not object to Waste Tank removal, Ion Exchange Pit clean-up, removal of Emergency Diesel Generators, or the Brookhaven National Laboratory Cable Sampling Project. Petitioners acknowledge that completion of Waste Tank removal and Ion Exchange Pit clean-up are required for safety reasons. Petitioners also acknowledge that the removal of the Emergency Diesel Generators is permissible because they are not radioactive, and that the Brookhaven National Laboratory Cable Sampling Project is a research project unrelated to decommissioning. Of the nine activities, all with the exception of radioactive waste shipments were completed before submission of the January 17, 1996, Petition.

Under the Commission's pre-1993 interpretation of its decommissioning regulations, a licensee ''may proceed with some activities such as decontamination, minor component disassembly, and shipment and storage of spent fuel if the activities are permitted by the operating license and/or § 50.59'', prior to final approval of a licensee's decommissioning plan, [1], as long as the activity does not involve major structural or other major changes and does not materially and demonstrably affect the methods or options available for decommissioning or substantially increase the costs of decommissioning. Long Island Lighting Company (Shoreham Nuclear Power Station, Unit 1), CLI–90–8, 32 NRC 201, 207, n.3 (1990); Long Island Lighting Company (Shoreham Nuclear Power Station, Unit 1), CLI–91–2, 33 NRC 61, 73. n.5 (1991); and Sacramento Municipal Utility District (Rancho Seco Nuclear Generating Station), CLI–92–2, 35 NRC 47, 61. n. 7 (1992).

Under the pre-1993 interpretation of the Commission's decommissioning regulations, examples of activities which were considered permissible and which were conducted at various facilities under a Possession-Only license before approval of a decommissioning plan included:

*Shoreham* [2]

- Core borings in biological shield wall
- Core borings of the reactor pressure vessel
- Regenerative heat exchanger removal and disassembly
- Various sections of reactor water clean-up system piping cut out and removed to determine effectiveness of chemical decontamination processes being used
- Removal of approximately half of reactor pressure vessel insulation and preparation for disposal
- Removal of fuel support castings and peripheral pieces removed and shipment offsite for disposal at Barnwell, South Carolina
- Reactor water clean-up system recirculation holding pump removed and shipped to James A. FitzPatrick Nuclear Power Plant
- Control rod drive pump shipped to Brunswick Nuclear Station
- One full set of control rod blade guides sold to Carolina Power and Light Company
- Control rod drives removed, cleaned, and stored in boxes for salvage
- Process initiated for segmenting and removing reactor pressure vessel cavity shield blocks
- Process initiated for removal of instrument racks, tubing, conduits, walkways, and pipe insulation presenting interferences for decommissioning activities and/or removal of salvageable equipment

*Fort St. Vrain* [3]

- Control rod drive and orifice assemblies and control rods removed from core during defueling and shipped offsite for processing or disposal as low-level waste
- All helium circulators removed and shipped offsite for disposal
- Core region constraint devices (internals) removed and approximately one-half shipped offsite for disposal
- About 50 core metal-clad reflector blocks (top layer of core) removed and stored in fuel storage wells
- Removal of remaining hexagonal graphite reflector elements, defueling elements, and metal-clad reflector blocks begun
- Pre-stressed concrete reactor vessel (PCRV) top cross-head tendons and some circumferential tendons detensioned
- Some detensioned tendons removed from PCRV
- Work initiated to cut and remove PCRV liner cooling system piping presenting interferences to detensioning of PCRV tendons, and
- Asbestos insulation completely removed from piping under PCRV

Activities such as normal maintenance and repairs, removal of small radioactive components for storage or shipment, and removal of components similar to that for maintenance and repair also were permitted prior to approval of a decommissioning plan under the Commission's pre-1993 interpretation of the Commission's decommissioning regulations. See NRC Inspection Manual, Chapter 2561, Section 06.06. (Issue Date: 03/20/92).[4]

Of course, licensees are also permitted to complete or to conduct activities required for compliance with safety requirements before approval of a decommissioning plan. In addition, special consideration must be given to activities required to comply with other federal and state safety requirements. See Memorandum of Understanding Between the Nuclear Regulatory Commission and the Occupational Safety and Health Administration, ''Worker Protection at NRC-licensed Facilities'' (October 21, 1988), 53 FR 43950 (October 31, 1988). See also NRC Inspection Manual, Chapter 1007, ''Interfacing Activities Between Regional Offices of NRC and OSHA''. Petitioners concede that completion of activities already underway is permissible if completion is required for immediate safety purposes.

The staff's November 2, 1995 letter evaluated the nine activities identified in YAEC's letter of October 19, 1995, based on the Commission's pre-1993 interpretation of its decommissioning regulations,[5] and determined that the nine activities were permissible before approval of a decommissioning plan.

Upon review of the Petition and its supplement of February 9, 1996, the staff took a fresh look at the nine activities and again found them to be permissible before approval of a decommissioning plan, under the pre-1993 interpretation of the Commission's decommissioning regulations, and thus under *CAN* v. *NRC* and CLI–95–14:

[1] Statement of Consideration, ''General Requirements for Decommissioning Nuclear Facilities'', 53 FR 24018, 24025–26 (June 27, 1988).

[2] See letter dated December 11, 1991 from John D. Leonard, Jr., Long Island Lighting Company, to U.S. Nuclear Regulatory Commission, Docket No. 50–322.

[3] See letter dated September 4, 1992 from Donald M. Warembourg, Public Service Company of Colorado, to the U.S. Nuclear Regulatory Commission, Docket No. 50–267.

[4] ''Examples of modifications and activities, that are allowed during the post-operational phase [the interval between permanent shutdown and the NRC's approval of the licensee's decommissioning plan] are (1) those that could be performed under normal maintenance and repair activities, (2) removal of certain, relatively small radioactive components, such as control rod drive mechanism, control rods, and core internals for disassembly, and storage or shipment, (3) removal of non-radioactive components and structures not required for safety in the post-operational phase, (5) shipment of reactor fuel offsite, and (6) activities related to site and equipment radiation and contamination characterization.''

[5] Petitioners claim that YAEC's ''1 percent'' criterion for determining what constitutes major structural or other major change (and thus what activities are permissible before approval of a decommissioning plan) would allow completion of decommissioning before any decommissioning plan could be approved in hearing. The staff does not accept or approve, and has not used this criterion to determine whether any YAEC activities, including the nine activities, are permissible before approval of a decommissioning plan.

*(1) Completion of Removal of the Remaining Portions of the Upper Neutron Shield Tank*

As stated in the NRC staff's letter of November 2, 1995, completion of this activity was necessary to avoid a significant lead hazard to plant personnel due to lead dust or powder deposits on surfaces of the structure (particularly if the plant were to go into an extended SAFSTOR configuration, as desired by Petitioners). That contamination, if disturbed during licensee maintenance activities or NRC inspections would pose a significant health hazard to Licensee and NRC personnel.

Petitioners object that this safety rationale is unsupported by factual information regarding actual lead levels in the tank and whether the lead levels violated OSHA standards.

Dismantlement of the Upper Neutron Shield Tank required cutting sections of the tank that had lead shielding. Cutting was completed before November 2, 1995 and lead cleanup was completed by November 8, 1995. Lead dust was created by dismantlement of the tank, already underway and completed before issuance of the November 2, 1995 staff letter. Surface lead residue measurements in those areas ranged between 13,000 micrograms/ft$^2$ and 390,000 micrograms/ft$^2$.

The Licensee's operating procedures require the Licensee to implement industrial hygiene control methods as specified by the Occupational Safety and Health Administration in areas where there is potential for employee exposure to lead. Procedure No. AP–0713, ''Lead Control Program'', Revision 1 Major, Section C (''Discussion''), p. 3. The target for removable lead contamination is 200 micrograms/ft$^2$. Id., ''Discussion'', Section C., ''Decontamination'', p. 4.

Lead dust resulting from dismantlement of the Upper Neutron Shield Tank was at a concentration such that surface lead contamination exceeded the target for removable lead contamination.[6] Licensee personnel were and are required to enter the area in order to conduct surveillances to monitor radioactive contamination and for compliance with fire protection requirements.

In view of the above, this activity was permissible for safety reasons, and, therefore, would have been allowed in a comparable situation before approval of a decommissioning plan, under the pre-1993 interpretation of the Commission's decommissioning regulations.

*(2) Waste Tank Removal (Activity Decay and Dilution Tank)*

Petitioners concede that completion of this activity was required for safety reasons.

*(3) Removal of Component Cooling Water System Pipes and Components and Spent Fuel Cooling System Pipes and Components*

Contrary to Petitioners' assertions, the staff's February 2, 1996, letter did not ''abandon'' the November 2, 1995, rationale for finding this activity permissible. The staff's February 2 letter repeated the November 2 rationale and provided a more detailed explanation for the staff's conclusion that this activity is permissible under the pre-1993 interpretation of the Commission's decommissioning regulations.

The Licensee had installed a self-contained spent fuel pool cooling system, isolated from the fluid components and installed conduit to allow future electrical isolation from other systems, in order to enhance safety and integrity of the spent fuel pool for prolonged storage of fuel. As a result, the Component Cooling Water System pipes and components and Spent Fuel Cooling System pipes and components were rendered redundant and were no longer useful.

Removal of the no-longer useful pipes and components was not decommissioning, but maintenance that would have been allowed, before approval of a decommissioning plan, under the pre-1993 interpretation of the Commission's decommissioning regulations.[7] Petitioners erroneously contend that removal of this equipment is not maintenance. Removal of replaced equipment (as opposed to removal of dismantled equipment not intended to be replaced) is a normal maintenance activity.

In view of the above, this activity was permissible, before approval of a decommissioning plan, under the pre-1993 interpretation of the Commission's decommissioning regulations.

*(4) Ion Exchange Pit Clean-up*

Petitioners concede that completion of this activity was required for safety reasons.

*(5) Fuel Chute Isolation*

The Licensee made a commitment to NRC to complete a Fuel Chute isolation project, needed to enhance spent fuel pool integrity and long-term reliability, in response to NRC Bulletin 94–01, ''Potential Fuel Pool Draindown Caused by Inadequate Maintenance Practices at Dresden Unit 1'' (April 14, 1994). NRC Bulletin 94–01 explicitly identified potential siphon or drainage paths and freezing failures as hazards that could lead to drainage of the spent fuel pool.[8] NRC Bulletin 94–01 required licensees to identify which of the suggested actions that the licensees would take to prevent such hazards, or to identify an alternative course of action, if the licensees needed to take such measures to bring themselves into compliance as described in NRC Bulletin 94–01.

YAEC's Fuel Chute isolation project eliminated a potential freezing threat and siphon path that could lead to drainage of the spent fuel pool. The NRC staff determined actions taken to prevent potential siphon paths and freezing hazards connected with the Fuel Chute to be adequate. NRC Inspection Report No. 50–029/94–80 (December 9, 1994).

Petitioners erroneously maintain that isolation of the upper Fuel Chute is not necessary to prevent a risk of siphoning or freezing, because the upper Fuel Chute lies above the fuel pool and cannot serve as a siphon for liquid in the pool. The fuel chute pipe originally ran from the lower lock valve at the outside wall at the bottom of the spent fuel pit (SFP) on a diagonal path to the outer shell of the vapor container (VC), through the shell and into the VC. During former plant operations a blank flange was inserted in the pipe, outside the VC shell, in order to maintain VC leak tight integrity.

As part of the NRC Bulletin 94–01 project, one 8-foot length of this 12 inch diameter fuel chute pipe was removed from the top of the lower lock valve and a blank flange placed over the lower lock valve so that the valve could be encased in concrete. This, in effect, made the valve part of the SFP wall. The removal of this section of pipe also eliminated a potential leak path through the pipe out of the SFP wall.

Isolation of the Fuel Chute, accomplished by removing the lowest flanged pipe section and sealing the lower portion of the Fuel Chute with concrete, eliminated a freezing and siphon hazard. Sealing the Fuel Chute with concrete prevents accumulation of water in the Fuel Chute. Accumulated water could freeze during severe winter weather and possibly damage the lower lock valve outside the spent fuel pool wall, thus opening a leak path near the bottom of the spent fuel pool.

Petitioners incorrectly maintain that the Licensee did not need to remove the upper Fuel Chute in order to comply with NRC Bulletin 94–01. The licensee did not remove the upper fuel chute. The licensee has fastened a blank flange at the wall of the VC by wedging open a flanged joint. This was a maintenance activity. This blank flange is normally in place and was removed, in the past, when fuel transfer operations took place. These transfers are now prohibited by the POL. The Fuel Chute isolation project was necessary to prevent potential siphon

[6] The use of respiratory protection by workers would not have satisfied the Licensee's operating procedures. Until a determination is made that any employee working with lead will not be exposed to lead at the action level, respiratory protection is required. Procedure No. AP–0713, ''Procedure'', Section C (''Lead Work Practices''), p. 11. The action level is employee exposure, without regard to use of respirators, to an airborne concentration of lead of 30 micrograms per cubic meter of air calculated as an 8-hour time-weighted average, and the permissible exposure limit is 50 micrograms per cubic meter of air over an 8-hour time weighted average, and 30 micrograms per cubic meter of air over a 10-hour time weighted average. Id., ''Definitions'', p. 1. Between October 5, 1995 and October 11, 1995, airborne lead concentrations in the areas affected ranged between 3 micrograms/m$^3$ and 2500 micrograms/m$^3$. Between October 12, 1995 and October 26, 1995, airborne lead concentrations ranged between 1 microgram/m$^3$ and 250 micrograms/m$^3$.

[7] Petitioners assert that the staff provided no factual support for its conclusion that leaving the Component Cooling Water System and Spent Fuel Cooling System pipes and components in place would pose a safety hazard. Upon further review, the staff has determined that removal was not necessary to prevent a safety hazard.

[8] Requested action number 2 was: ''Ensure that systems for essential area heating and ventilation are adequate and appropriate maintenance so that potential freezing failures that could cause loss of SFP water inventory are precluded.'' Requested action number 3 was: ''Ensure that piping or hoses in or attached to the SFP cannot serve as siphon or drainage paths in the event of piping or hose degradation or failure or the mispositioning of system valves.''

and freezing risks, was one of the actions determined to be an adequate response to NRC Bulletin 94–01, and brought the Licensee into compliance with NRC requirements.

In any event, this activity is not decommissioning, but maintenance and a safety upgrade that would have been allowed under the pre-1993 interpretation of the Commission's decommissioning regulations.

In view of the above, this activity was permissible, before approval of a decommissioning plan, under the pre-1993 interpretation of the Commission's decommissioning regulations.

*(6) Removal of Emergency Diesel Generators*

Petitioners acknowledge that removal of the emergency diesel generators is a permissible activity prior to final approval of a decommissioning plan.

*(7) Spent Fuel Pool Electrical Conduit Installation*

This activity involved underground installation of a power cable and its protective covering and did not involve the removal of radioactive material. The modification also enhanced the integrity and long-term safe storage of spent fuel in the Spent Fuel Pool, by isolating Spent Fuel Pool power supplies from potential problems that could be caused by power circuits in other systems or heavy load impacts at the plant. The activity was part of the Licensee's overall project to enhance the safety of the Spent Fuel Pool by establishing independent systems dedicated to Spent Fuel Pool reliability.

The conduit installation was also consistent with NRC Bulletin 94–01, specifically the first requested action, which involves ensuring the integrity of structures and systems, necessarily including electrical systems, required for containing, cooling, cleaning, level monitoring and makeup of water in the Spent Fuel Pool. The conduit installation project enhanced integrity of the spent fuel pool by ensuring operability and adequacy of structures and systems required for spent fuel pool integrity, specifically the electrical system.

Petitioners object that the November 2, 1995 letter implies that this activity is a decommissioning activity because it will provide a separate power supply for future decommissioning activities. Petitioners contend that there is no present threat to the integrity of the spent fuel pool, and that as long as the Licensee performs no major dismantlement activities, there is no immediate need for conduit installation.

While it is true that conduit installation will isolate the spent fuel power supply from potential problems associated with future decommissioning of other systems, conduit installation also serves the larger purpose of isolating spent fuel pool power supplies from potential problems that could be caused by power circuits in other systems at the plant, wholly apart from the conduct of any decommissioning activities. This activity represents a safety enhancement.

In view of the above, this activity was permissible, before approval of a decommissioning plan, under the pre-1993 interpretation of the Commission's decommissioning regulations.

*(8) Brookhaven National Laboratory Cable Sampling Project*

Petitioners acknowledge that this activity is a research project unrelated to decommissioning.

*(9) Radioactive Materials Shipments*

Under the pre-1993 interpretation of the Commission's decommissioning regulations and 10 CFR § 50.59, the NRC has permitted shipment of radioactive waste and contaminated components prior to approval of a decommissioning plan, as long as it does not materially and demonstrably affect the methods or options available for decommissioning or substantially increase the cost of decommissioning, and because such shipments do not constitute a ''major'' activity.

NRC staff practice prior to 1993 permitted activities such as shipment of waste or contaminated components at a permanently defueled facility pursuing decommissioning. Prior to approval of a decommissioning plan, the licensee may dismantle and dispose of nonradioactive components and structures not required for safety in the shutdown condition. After issuance of a possession-only license, the licensee also may dismantle and dispose of radioactive components not required for safety in the shutdown condition, provided that such activity does not involve major structural or other major changes and does not foreclose alternative decommissioning methods or materially affect the cost of decommissioning. Long Island Lighting Company (Shoreham Nuclear Power Station, Unit 1), CLI–91–08, 33 NRC 461, 471 (1991), approving staff recommendations in SECY–91–129, ''Status and Developments at the Shoreham Nuclear Power Station'' (May 13, 1991). See also NRC Inspection Manual, Chapter 2561, §§ 06.06 and 06.07 (March 20, 1992); Fort St. Vrain Nuclear Generating Station Amendment No. 82 to Facility Operating License No. DPR–34 (Possession-Only License, May 21, 1991); and Rancho Seco Nuclear Generating Station Amendment No. 117 to Facility Operating License No. DPR–54 (Possession-Only License, March 17, 1992).

Petitioners contend that the February 2, 1996, letter of the NRC staff applied the post-1993 interpretation of the Commission's decommissioning regulations to determine that shipment of low-level radioactive waste is permissible,[9] based on the staff's citation to SECY 92–382 and the associated June 30, 1993 SRM. The particular language Petitioners point to is:

Shipment of contaminated reactor internals needed for operation could proceed after issuance of a possession-only license because such components are not ''major'': i.e., they are not needed to maintain safety in the defueled condition. See SECY 92–382, ''Decommissioning—Lessons Learned'' (November 10, 1992) and Staff Requirements Memorandum, ''SECY–92–382—Decommissioning—Lessons Learned'' (June 30, 1993).

The staff's February 2, 1996, letter derived this language from a discussion at pages 22–24 of SECY–92–382, ''Decommissioning—Lessons Learned''.

The Commission had in fact permitted shipment of low-level waste prior to approval of a decommissioning plan under its pre-1993 interpretation of its decommissioning regulations, as explained above. SECY 92–382 accurately stated that the Commission had in fact permitted shipment of not only low-level radioactive waste and some components, but also some reactor internals, before approval of a decommissioning plan.[10] The particular reference to ''major'' components in SECY 92–382 was in the context of permissible shipment of waste; that language did not define ''major'' for the purpose of determining what components may be dismantled or removed prior to approval of a decommissioning plan. No component can be shipped unless it is first removed or dismantled, and authority to ship a component already removed or dismantled does not *ipso facto* constitute authority to remove or dismantle the component in the first place. Likewise, the citation in the NRC staff's February 2, 1996, letter to Petitioners was not intended to define ''major'' for the purpose of determining what components could be dismantled or removed prior to approval of a decommissioning plan, but referred to what could be shipped. The staff's reference to SECY 92–382 was made in the context of permissible shipments only, not permissible component dismantling or removal. Regrettably, the staff's February 2, 1995, reference to SECY 92–382 may have been insufficiently detailed to make the purpose of the reference clear.

In the case at hand, the Licensee's proposal was to ship low-level radioactive waste.[11]

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[9] Petitioners incorrectly contend that the staff's conclusion, that the methods or options available for decommissioning will not be materially or demonstrably affected because the Licensee's activities involve approximately 2.3 curies of residual activity, constitutes application of the Licensee's one percent criterion. The Licensee had proposed in its letter of October 24, 1995, that decommissioning activities involving less than one percent of the total curies of non-fuel components not including greater than Class C components, are not ''major'' decommissioning activities and thus are permissible under the pre-1993 interpretation of the Commission's decommissioning regulations. As previously stated, the NRC staff does not accept or approve, and did not use, this criterion in its February 2, 1996 (or its November 2, 1995) letter to determine whether activities proposed by the Licensee, including shipping, are ''major'' activities for purposes of permissible decommissioning before approval of a decommissioning plan. See, e.g., note 5, supra. The staff in fact stated that since the Licensee's activities involve only 2.3 curies out of a total 4448 curies residual activity which must be decommissioned, shipment of low-level radioactive waste will not demonstrably affect the methods or options available for decommissioning.

[10] See Long Island Lighting Company (Shoreham Nuclear Power Station, Unit 1), CLI–91–8, 33 NRC 461, 471 (1991). See also SECY–91–129, ''Status and Developments at the Shoreham Nuclear Power Station (SNPS)'', p. 3 (May 13, 1991) (contaminated fuel support castings and peripheral pieces).

[11] Petitioners contend that there is no basis to determine the accuracy of the Licensee's estimate that it will make 54 shipments of low-level radioactive waste between October 1995 and July 1996. Petitioners, however, fail to set forth any facts

The NRC staff's conclusion that the Licensee's proposal to ship radioactive waste[12] is permissible under the pre-1993 interpretation of the Commission's decommissioning regulations was based on the understanding that the proposal was to ship low-level radioactive waste, and was not intended to be and was not a determination that the removal or dismantling of major components was permissible under the pre-1993 interpretation of the Commission's decommissioning regulations,[13] under *CAN* v. *NRC*, or under CLI–94–14.

The Commission's decisions in Long Island Lighting Company (Shoreham Nuclear Power Station, Unit 1), CLI–92–1, 33 NRC 61, 73, n. 5 (1991) and Sacramento Municipal Utility District (Rancho Seco Nuclear Generating Station), CLI–92–2, 35 NRC 47, 61, n. 7 (1992) do not, as Petitioners contend, prohibit shipment of low-level radioactive waste. No issue concerning such shipments was addressed in those decisions. The language cited by Petitioners paraphrases the general guideline, that ''major dismantling and other activities that constitute decommissioning under the NRC's regulations must await NRC approval of a decommissioning plan'', and is derived from the 1988 Statement of Consideration, ''General Requirements for Decommissioning Nuclear Facilities'', *supra.* As explained above, it was agency practice before 1993 to permit shipment of low-level radioactive waste and contaminated components before approval of a decommissioning plan.

Rather than store low-level radioactive waste on-site for extended periods, it has long been agency policy that such waste should be shipped to disposal sites if the ability to dispose of waste at a licensed disposal site exists. Shipping of waste at the earliest practicable time minimizes the need for eventual waste reprocessing due to possibly changing burial ground requirements and reduces occupational and non-occupational exposures and potential accident consequences. NRC Generic Letter 81–38, ''Storage of Low-Level Radioactive Wastes at Power Reactor Sites'' (November 10, 1981).

Petitioners contend that YAEC may not ship low-level radioactive waste because the Yankee Rowe Possession-Only-License does not permit it.[14] Although Petitioners are correct that no language in the Yankee Rowe POL explicitly states that shipment of low-level radioactive waste is authorized, the Yankee Rowe POL does authorize that activity. Section 1.H. of the POL, issued August 5, 1992, authorizes Yankee Rowe to receive, possess and use byproduct, source and special nuclear materials in accordance with the Commission's regulations in 10 CFR Parts 30, 40 and 70. Authority to ship low-level radioactive waste is conferred upon all byproduct material, source material and special nuclear material licensees by NRC regulations at 10 CFR Parts 30, 40 and 70. Byproduct materials licensees, source materials licensees, and special nuclear materials licensees, including Yankee Rowe, are authorized to transfer such material, as long as the recipient is authorized, see 10 CFR §§ 30.41, 40.51, and 70.42, and as long as preparation for shipment and transport is in accordance with the requirements of 10 CFR Part 71. See 10 CFR §§ 30.34(c), 40.41(c), 70.41(a). In particular, Section 2.C. of the Yankee Rowe POL states that the POL is deemed to contain and is subject to 10 CFR §§ 30.34 and 40.41. Accordingly, the POL authorizes the transport of low-level radioactive waste from Yankee Rowe.

Petitioners state that the ''cardinal consideration'' which determines whether a decommissioning activity is ''major'' should be the radiation dose it yields, not the radioactivity of the component involved[15], and thus the NRC staff's February 2, 1996, letter erroneously relied upon the number of curies shipped rather than the radioactive doses involved in shipping low-level waste to determine whether the activity is permissible.[16]

The criteria for determining whether shipments of low-level radioactive waste will demonstrably affect the methods or options available for decommissioning have not been well-defined. During review of the Petition and its supplement, the NRC staff has continued to examine the question of whether the Licensee's shipments of low-level radioactive waste will demonstrably affect the methods or options available for decommissioning. In this case, the staff has now also compared the radiation dose involved in the packaging and shipping of the low-level radioactive waste with the radiation dose estimated for decommissioning of the Licensee's facility. This is because, under Petitioners' theory regarding the choice of the decommissioning option, as we understand it, it seems that adoption of a different decommissioning option would most likely be required to reduce dose. The Licensee estimates that the radiation dose involved in the packaging and shipment of low-level radioactive waste between November 1, 1995 and July 1996 to be 17 person-rem.[17] The estimated total radiation exposure for decommissioning the facility is 755 person-rem.[18] The estimated dose from packaging and shipping is approximately 2% of the total dose from decommissioning. As can be seen, most of the dose will be incurred in activities other than shipment of low-level radioactive waste. As the Commission has previously held in this case, even potential dose reductions on the order of 900 person-rem, unless there is some extraordinary aspect to the case not apparent, cannot have ALARA significance such that one decommissioning option

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or rationale which raise a question as to the reasonableness of the Licensee's estimate of the number of shipments.

[12] Petitioners state that neither YAEC nor the NRC staff provided any information about the radioactivity levels in the 54 shipments that YAEC estimates it shipped and will ship between October 1995 and July 1996, and that the Licensee's January 29, 1996, estimate of 2.3 curies involved in activities already completed does not provide information about radioactivity levels of the 54 shipments that YAEC estimates it will have shipped before the end of July 1996. The Licensee has now provided that information and estimates the total radioactivity involved in the packaging and shipment of low-level radioactive waste between November 1, 1995 and July 1996, to be 1817 curies. See letter dated February 21, 1996, from K. J. Heider, YAEC, to Morton B. Fairtile, NRC. The four contested activities, other than shipping, amounted to only approximately 8.2001 curies of residual radioactivity.

[13] Petitioners assert that the NRC staff's February 2, 1966, letter states that the shipment of low-level radioactive waste is permitted under the pre-1993 criteria because the radioactivity of the shipments amounts to 2.3 curies or less out of the remaining 4448 curies of residual radioactivity to be decommissioned in the form of Class C or less waste. What the staff said was that because the Licensee's activities involve approximately 2.3 curies of the remaining 4448 curies of residual radioactivity to be decommissioned in the form of Class C or less waste, shipment of low-level radioactive waste produced by the activities evaluated in the staff's November 2, 1995 letter will not materially or demonstrably affect the methods or options available for decommissioning the Yankee Rowe site.

[14] Petitioners claim that the Commission's decommissioning regulations prohibit low-level radioactive waste shipments that are not authorized by YAEC's license, citing the 1988 Statement of Consideration. See ''General Requirements for Decommissioning Nuclear Facilities'', 53 FR 24025–26 (June 27, 1988). The Statement of Consideration makes no mention of shipment of low-level radioactive waste. The language cited gives examples of activities which licensees may conduct before approval of a decommissioning plan, but does not state or imply that the list is inclusive: ''Although the Commission must approve the decommissioning alternative and major structural changes to radioactive components of the facility or other major changes, the licensee may proceed with some activities such as decontamination, minor component disassembly, and shipment and storage of spent fuel if these activities are permitted by the operating license and/or § 50.59''. (Emphasis added)

[15] The Commission has not articulated as a criterion, for determining what constitutes a ''major'' decommissioning activity, the radiation dose yielded by the activity, and Petitioners cite no authority for this argument. Nor has the Commission articulated the radioactivity involved as a criterion for determining what constitutes ''major'' decommissioning activity.

[16] The staff mistakenly understood the License's letter of January 29, 1996 to mean that the activities evaluated by the staff's November 2, 1995 letter involved 2.3 curies. The radioactivity involved in the four contested activities, other than shipping of low-level radioactive waste, amounted to approximately 8.2001 curies of residual radioactivity. (Removal of the Upper Neutron Shield Tank involved less than 5 curies, and removal of the Component Cooling Water System pipes and components and Spent Fuel Cooling System pipes and components involved 1.2001 curies. See letter dated October 19, 1995, from Russell A. Mellor, YAEC, to Morton B. Fairtile, NRC. Fuel Chute Isolation involved 2 curies, and spent fuel pool electrical conduit installation involved no curies. See letter dated February 21, 1996, from K. J. Heider, YAEC, to Morton B. Fairtile, NRC.) In addition, the Licensee estimated that since completion of the activities described in the NRC letter, activities have been authorized by the Licensees' Manager of Operations which remove components containing a total of 2.3 curies of radioactive material. See letter dated January 29, 1996, from Andrew C. Kadak, YAEC, to William T. Russell, NRC.

[17] *See* letter dated February 21, 1996, from K. J. Heider, YAEC, to Morton B. Fairtile, NRC.

[18] Order Approving the Decommissioning Plan and Authorizing Decommissioning of Facility (Yankee Nuclear Power Station), ''Environmental Assessment by the U.S. Nuclear Regulatory Commission Related to the Request to Authorize Facility Decommissioning'', p. 22.

would be preferable to another.[19] Accordingly, the staff concludes that the Licensee's shipment of low-level radioactive waste will not demonstrably affect the methods and options available for decommissioning.

In view of the above, the shipments of low-level radioactive waste between October 1995 and July 1996, before approval of a decommissioning plan, is permissible under the pre-1993 interpretation of the Commission's decommissioning regulations.

B. The five contested activities will neither individually nor collectively substantially increase the costs of decommissioning.

YAEC estimates the cost of shipment and disposal of all low-level radioactive waste between the October 1995 issuance of CLI–95–14 and the scheduled date of completion of the hearing in mid-July 1996, to be $6.5 million, or approximately 1.75 percent of the estimated $368.8 million total decommissioning cost. It would be speculative to conclude that the decommissioning method proposed by Petitioners, SAFSTOR, would be less expensive. There is no evidence that the Licensee's shipments will increase decommissioning costs or that continued storage of the waste will decrease the ultimate costs. Thus, the staff concludes that YAEC's shipment of low-level radioactive waste will not substantially increase the costs of decommissioning.

Petitioners erroneously contend that the cost of shipments of low-level radioactive waste could be reduced by postponing the packaging and shipment of low-level waste, presumably because some waste may decay to levels such that the volume of waste which will require shipment would decrease. Delay will not significantly reduce the volume of waste shipped because the waste is not segregated by the radioactive isotope involved, and some of the radioactive isotopes involved have very long half-lives, i.e., nickel-63 has a half-life of 100 years. Cobalt-60, which has a half-life of 5.27 years, was the isotope selected by the Petitioners to postulate a reduction in waste volume. Moreover, delay could possibly increase decommissioning costs because shipping and burial costs may increase.

The Licensee estimates costs for the five activities contested by Petitioners to be $6.5 million for shipments of low-level waste between October 1995 and July 1996 and $2.4 million for the four other contested activities,[20] for a total of $8.9 million, or 2.1% of the $368.8 million estimated total decommissioning costs. There is no evidence that these activities will give rise to consequences that will increase the total cost of decommissioning. Accordingly, the five contested activities will not substantially increase decommissioning costs, either individually or collectively.

C. Petitioners' Request for an Inspection and Inspection Report Was Granted.

Petitioners' request for reinspection of Yankee Rowe to determine compliance with CLI–95–14 and for issuance of an inspection report was granted. NRC Region I inspected the Yankee Rowe facility for a second time on December 5–18, 1995, to determine compliance with CLI–95–14. NRC Inspection Report No. 50–029/95–07 was issued January 31, 1996. The Inspection Report concludes that the Licensee's activities were conducted in accord with the specifications of the staff's November 2, 1995 letter. The first inspection was conducted in October 1995, before the provision of technical guidance or criteria to assist the Region in determining compliance with CLI–95–14. Subsequently, the NRC staff issued its letter of November 2, 1995, evaluating the nine activities, all of which are permitted by *CAN* v. *NRC* and CLI–95–14, as explained above.

Petitioners claim that the January 31, 1996 Inspection Report merely repeats the staff's erroneous interpretation of the Commission's decommissioning standards, and thus constitutes no relief. The inspection report explicitly states that the nine activities evaluated by the staff's November 2, 1995 letter were inspected and that the Licensee limited the scope of its work to those activities. Petitioners' disagreement with the staff's conclusion that the nine activities are in compliance with *CAN* v. *NRC* and CLI–95–14 does not constitute denial of Petitioners' request for an inspection and an inspection report to determine compliance with *CAN* v. *NRC* and CLI–95–14.

*IV. Conclusion*

For the reasons given above, Petitioner's request that shipments of low-level radioactive waste be prohibited is denied, and Petitioners' request that four other activities be prohibited is moot.[21] Additionally, Petitioners' request for an inspection of Yankee Rowe to determine compliance with CLI–95–14 and an inspection report was granted.

As provided by 10 CFR § 2.206(c), a copy of this Decision will be filed with the Secretary of the Commission for the Commission's review. The Decision will become the final action of the Commission 25 days after issuance, unless the Commission on its own motion institutes review of the Decision within that time.

Dated at Rockville, Maryland this 22nd of February, 1996.

For the Nuclear Regulatory Commission.

William. T. Russell,

*Director, Office of Nuclear Reactor Regulation.*

[FR Doc. 96–4683 Filed 2–28–96; 8:45 am]

BILLING CODE 7590–01–P

[19] Yankee Atomic Electric Company, CLI–96–01 (January 16, 1996).

[20] The Licensee spent $610,000 on the four activities in the fourth quarter of 1995, which is approximately 25 percent of the estimated total cost for these four activities. See Letter dated February 15, 1996, from Russell A. Mellor to Morton B. Fairtile.

[21] Petitioners claim that the NRC erroneously found on February 2, 1996, that the request for emergency relief was moot in part. Petitioners assert that the Licensee continues to unlawfully ship low-level radioactive waste and that on January 29, 1996, the Licensee stated that it is considering whether to conduct seven activities, in addition to the nine evaluated by the staff's November 2, 1995, letter. The February 2, 1996, letter of the staff and this Decision explicitly denied Petitioner's request to prohibit shipment of low-level radioactive waste, and made no finding that this request is moot. The February 2, 1996, letter and this Decision explicitly state that Petitioners' request for emergency relief regarding the remaining four contested activities was moot because those activities had been completed before the submission of the Petition. Nonetheless, both the February 2, 1996 letter and this Decision found that those four activities were permissible, prior to approval of a decommissioning plan, under the pre-1993 interpretation of the Commission's decommissioning regulations. Neither the staff's February 2, 1996, letter, nor this decision address the seven activities which the Licensee states it is now considering. The staff will address those activities in a supplemental Director's Decision, as required by the Commission's order of February 15, 1996.

## POSTAL RATE COMMISSION

**[Docket No. A96–11; Order No. 1103]**

## Notice and Order Accepting Appeal and Establishing Procedural Schedule Under 39 U.S.C. 404(b)(5)

Issued February 23, 1996.

Before Commissioners: Edward J. Gleiman, Chairman; W.H. ''Trey'' LeBlanc III, Vice-Chairman; George W. Haley; H. Edward Quick, Jr.

*In the Matter of:* Oquossoc, Maine 04964 (William Cummings, Petitioner).

DOCKET NUMBER: A96–11
NAME OF AFFECTED POST OFFICE: Oquossoc, Maine 04964
NAME(S) OF PETITIONER(S): William Cummings
TYPE OF DETERMINATION: Consolidation
DATE OF FILING OF APPEAL PAPERS: February 20, 1996
CATEGORIES OF ISSUES APPARENTLY RAISED:

1. Effect on postal services [39 U.S.C. § 404(b)(2)(C)].
2. Effect on the community [39 U.S.C. § 404(b)(2)(A)].

After the Postal Service files the administrative record and the Commission reviews it, the Commission may find that there are more legal issues than those set forth above. Or, the Commission may find that the Postal Service's determination disposes of one or more of those issues.

The Postal Reorganization Act requires that the Commission issue its decision within 120 days from the date this appeal was filed (39 U.S.C. § 404 (b)(5)). In the interest of expedition, in light of the 120-day decision schedule, the Commission may request the Postal Service to submit memoranda of law on any appropriate issue. If requested, such memoranda will be due 20 days from the issuance of the request and the Postal Service shall serve a copy of its memoranda on the petitioners. The Postal Service may incorporate by reference in its briefs or motions, any arguments presented in memoranda it

previously filed in this docket. If necessary, the Commission also may ask petitioners or the Postal Service for more information.

The Commission Orders

(a) The Postal Service shall file the record in this appeal by March 6, 1996.

(b) The Secretary of the Postal Rate Commission shall publish this Notice and Order and Procedural Schedule in the Federal Register.

By the Commission.

Margaret P. Crenshaw,

*Secretary.*

Appendix

February 20, 1996
Filing of Appeal letter
February 23, 1996
Commission Notice and Order of Filing of Appeal
March 15, 1996
Last day of filing of petitions to intervene [*see* 39 C.F.R. § 3001.111(b)]
March 26, 1996
Petitioner's Participant Statement or Initial Brief [*see* 39 C.F.R. § 3001.115(a) and (b)]
April 15, 1996
Postal Service's Answering Brief [*see* 39 C.F.R. § 3001.115(c)]
April 30, 1996
Petitioner's Reply Brief should Petitioner choose to file one [*see* 39 C.F.R. § 3001.115(d)]
May 7, 1996
Deadline for motions by any party requesting oral argument. The Commission will schedule oral argument only when it is a necessary addition to the written filings [*see* 39 C.F.R. § 3001.116]
June 19, 1996
Expiration of the Commission's 120-day decisional schedule [*see* 39 U.S.C. § 404(b)(5)]

[FR Doc. 96–4596 Filed 2–28–96; 8:45 am]

BILLING CODE 7710–FW–P

## RAILROAD RETIREMENT BOARD

### Proposed Collection; Comment Request

**SUMMARY:** In accordance with the requirement of Section 3506(c)(2)(A) of the Paperwork Reduction Act of 1995 which provides opportunity for public comment on new or revised data collection, the Railroad Retirement Board (RRB) will publish periodic summaries of proposed data collections.

*Comments are invited on:* (a) Whether the proposed information collection is necessary for the proper performance of the functions of the agency, including whether the information has practical utility; (b) the accuracy of the RRB's estimate of the burden of the collection of the information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden related to the collection of information on respondents, including the use of automated collection techniques or other forms of information technology.

*Title and Purpose of information collection:* Aged Monitoring Questionnaire: OMB 3220–0178.

As outlined in 20 CFR 219.3(b), once a claimant establishes entitlement to an annuity under the Railroad Retirement Act (RRA), the RRB may ask that annuitant to produce evidence needed to decide whether he or she may continue to receive an annuity or whether the annuity should be reduced or stopped.

The RRB utilizes Form G–19c, Aged Monitoring Questionnaire, to monitor select aged annuitants. Use of the form assists RRB efforts to discover unreported deaths and also to determine if an aged annuitant is able to manage their own affairs. One response is requested from each respondent. Completion is voluntary. Minor editorial and reformatting changes to Form G–19c have been proposed.

Estimate of Annual Respondent Burden

The estimated annual respondent burden is as follows:

| Form No(s) | Annual re-sponses | Time (min) | Burden (hrs) |
|---|---|---|---|
| G–19c ..... | 10,000 | 6 | 1,000 |

**ADDITIONAL INFORMATION OR COMMENTS:** To request more information or to obtain a copy of the information collection justification, forms, and/or supporting material, please call the RRB Clearance Officer at (312) 751–3363. Comments regarding the information collection should be addressed to Ronald J. Hodapp, Railroad Retirement Board, 844 N. Rush Street, Chicago, Illinois 60611–2092. Written comments should be received within 60 days of this notice.

Chuck Mierzwa,

*Clearance Officer.*

[FR Doc. 96–4648 Filed 2–28–96; 8:45 am]

BILLING CODE 7905–01–M

### Proposed Collection; Comment Request

**SUMMARY:** In accordance with the requirement of Section 3506(c)(2)(A) of the Paperwork Reduction Act of 1995 which provides opportunity for public comment on new or revised data collections, the Railroad Retirement Board (RRB) will publish periodic summaries of proposed data collections.

*Comments are invited on:* (a) Whether the proposed information collection is necessary for the proper performance of the functions of the agency, including whether the information has practical utility; (b) the accuracy of the RRB's estimate of the burden of the collection of the information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden related to the collection of information on respondents, including the use of automated collection techniques or other forms of information technology.

*Title and Purpose of information collection:* Employee Non-Covered Service Pension Questionnaire; OMB 3220–0154.

Section 215(a)(7) of the Social Security Act provides for a reduction in social security benefits based on employment not covered under the Social Security Act or the Railroad Retirement Act (RRA). This provision applies a different social security benefit formula to most workers who are first eligible after 1985 to both a pension based on whole or in part on noncovered employment and a social security retirement or disability benefit. There is a guarantee provision that limits the reduction in the social security benefit to one-half of the portion of the pension based on noncovered employment after 1956. Section 8011 of P.L. 100–647 changed the effective date of the onset from the first month of eligibility to the first month of concurrent entitlement to the noncovered service benefit and the RRA benefit.

Section 3(a)(1) of the RRA provides that the Tier I benefit of an employee annuity will be equal to the amount (before any reduction for age or deduction for work) the employee would receive if he or she would have been entitled to a like benefit under the Social Security Act. The reduction for a noncovered service pension also applies to a Tier I portion of employees under the RRA where the annuity or noncovered service pension begins after 1985. Since the amount of a Tier I benefit of a spouse is one-half of the employee's Tier I, the spouse annuity is also affected by the employee's noncovered service pension reduction of his or her Tier I benefit.

The RRB utilizes Form G–209, Employee Noncovered Service Pension Questionnaire, to obtain needed information from railroad retirement employee applicants or annuitants about the receipt of a pension based on employment not covered under the

Railroad Retirement Act or the Social Security Act. It is used as both a supplement to the employee annuity application, and as an independent questionnaire to be completed when an individual who is already receiving an employee annuity becomes entitled to a pension.

One response is requested of each respondent. Completion is required to obtain or retain benefits.

The RRB proposes a minor editorial change to Form G–209.

Estimate of Annual Respondent Burden

The estimated annual respondent burden is as follows:

| Form No(s). | Annual re-sponse | Time (min) | Burden (hrs) |
|---|---|---|---|
| G–209 (partial questionnaire) | 100 | 1 | 2 |
| G–209 (full questionnaire) | 400 | 8 | 53 |
| Total ..... | 500 | ..... | 55 |

**ADDITIONAL INFORMATION OR COMMENTS:** To request more information or to obtain a copy of the information collection justification, forms, and/or supporting material, please call the RRB Clearance Officer at (312) 751–3363. Comments regarding the information collection should be addressed to Ronald J. Hodapp, Railroad Retirement Board, 844 N. Rush Street, Chicago, Illinois 60611–2092. Written comments should be received within 60 days of this notice.

Chuck Mierzwa,

*Clearance Officer.*

[FR Doc. 96–4677 Filed 2–28–96; 8:45 am]

**BILLING CODE 7905–01–M**

## SECURITIES AND EXCHANGE COMMISSION

**[Rel. No. IC–21771; 812–9874]**

## Qualified Unit Investment Liquid Trust Series Equity Opportunity Trust, et al.; Notice of Application

February 22, 1996.

**AGENCY:** Securities and Exchange Commission (''SEC'').

**ACTION:** Notice of application for exemption under the Investment Company Act of 1940 (the ''Act'').

**APPLICANTS:** Qualified Unit Investment Liquid Trust Series Equity Opportunity Trust (the ''Trust''), Oppenheimer Quest for Value Funds (the ''Value Funds''), OppenheimerFunds, Inc. (''OppenheimerFunds''), OpCap Advisors (''OpCap''), OCC Distributors (the ''Sponsor''), and Oppenheimer Fund Distributors, Inc. (''OFDI'').

**RELEVANT ACT SECTIONS:** Order requested under section 6(c) of the Act to grant an exemption from sections 14(a) and 19(b) of the Act and rule 19b–1 thereunder and under section 17(d) and rule 17d–1 to permit certain affiliated transactions.

**SUMMARY OF APPLICATION:** Applicants request an order (a) permitting the Trust to invest in shares of the Value Funds and U.S. Treasury zero coupon obligations; (b) exempting the Sponsor from having to take for its own account or place with others $100,000 worth of units in the Trust; (c) permitting the Trust to distribute capital gains resulting from redemptions of the Value Fund shares within a reasonable time after receipt; and (d) permitting certain affiliated transactions involving the Trust.

Applicants request that relief also be extended to any other open-end investment company (including any series thereof), other than money market or no-load funds, that may be advised by OppenheimerFunds or OpCap or be distributed by OFDE, or be advised and/or distributed by any entity controlling, controlled by, or under common control with OppenheimerFunds, OpCap, or OFDI (collectively with the Value Funds, the ''Funds'').

**FILING DATES:** The application was filed on December 6, 1995, and amended on February 12, 1996.

**HEARING OR NOTIFICATION OF HEARING:** An order granting the application will be issued unless the SEC orders a hearing. Interested persons may request a hearing by writing to the SEC's Secretary and serving applicants with a copy of the request, personally or by mail. Hearing requests should be received by the SEC by 5:30 p.m. on March 18, 1996, and should be accompanied by proof of service on the applicants, in the form of an affidavit or, for lawyers, a certificate of service. Hearing requests should state the nature of the writer's interest, the reason for the request, and the issues contested. Persons who wish to be notified of a hearing may request notification by writing to the SEC's Secretary.

**ADDRESSES:** Secretary, SEC, 450 Fifth Street NW., Washington, D.C. 20549. Applicants: Oppenheimer Quest for Value Funds, the Trust, OppenheimerFunds, and OFDI, Two World Trade Center, New York, New York 10048–0203; the Sponsor, Two World Financial Center, 225 Liberty Street, New York, New York 10080–6116; and OpCap, One World Financial Center, New York, New York 10281.

**FOR FURTHER INFORMATION CONTACT:** Elaine M. Boggs, Staff Attorney, at (202) 942–0572, or Robert A. Robertson, Branch Chief, at (202) 942–0564 (Division of Investment Management, Office of Investment Company Regulation).

**SUPPLEMENTARY INFORMATION:** The following is a summary of the application. The complete application may be obtained for a fee from the SEC's Public Reference Branch.

Applicants' Representations

1. The Value Funds are open-end management investment companies registered under the Act. The Value Funds have adopted a multiple class plan and shares of the Value Funds are offered with front-end sales loads and, in certain instances, with contingent deferred sales charges. Each of the Value Funds has adopted a rule 12b–1 plan.

2. Each Value Fund has entered into an investment advisory or management agreement with OppenheimerFunds or one of its affiliates and, in some cases, a sub-advisory agreement with OpCap. OppenheimerFunds, formerly Oppenheimer Management Corporation, is owned by Oppenheimer Acquisition Corp, a holding company controlled by Massachusetts Mutual Life Insurance Company. OpCap is a majority-owned subsidiary of Oppenheimer Capital. OFDI acts as the distributor for the Value Funds. OFDI is a wholly-owned subsidiary of OppenheimerFunds. The Sponsor acts as sponsor for the Trust and is a majority owned subsidiary of Oppenheimer Capital.

3. The Trust will offer units in series (''Trust Series''). Each Trust Series will contain shares of one Fund and U.S. Government zero coupon obligations. The Trust's objective is to provide protection of capital while providing for capital appreciation through investments in zero coupon obligations and shares of the Funds. Each Trust Series will be organized pursuant to a reference trust agreement that will incorporate a trust indenture and agreement relating to the entire Trust (collectively, the ''Trust Agreement'') and that will name a qualified bank as trustee (''Trustee'').

4. Each Trust Series will be sponsored by the Sponsor, which will perform the functions typical of unit investment trust sponsors. The Sponsor expects to deposit in the Trust substantially more than $100,000 aggregate value of zero coupon obligations and shares of the Funds.

5. Trust units will be offered for sale to the public through the final

prospectus by the Sponsor. Trust series are intended to be offered to the public initially at prices based on the net asset value of the shares of the Funds selected for deposit in that Trust Series, plus the offering side value of the zero coupon obligations contained therein, plus a sales charge. The Trust will redeem units at prices based on the then currently aggregate bid side evaluation of the zero-coupon obligations and the then current net asset value of the Fund shares.

6. The Trust will be structured so that each Trust Series will contain a sufficient amount of zero coupon obligations to assure that, at the specified maturity date for such Trust Series, the purchaser of a unit would receive back the approximate total amount of the original investment in the Trust, including the sales charge. Such investor would receive more than the original investment to the extent that the underlying Fund made any distributions during the life of the Trust and/or had any value at the maturity of the Trust Series.

7. The Sponsor intends to maintain a secondary market for Trust units, but is not obligated to do so. The existence of such a secondary market will reduce the number of units tendered to the Trustee for redemption and thus alleviate the necessity of selling portfolio securities to raise the cash necessary to meet such redemptions.

8. The Trust has taken certain steps to reduce the impact of the termination of a Trust Series on the Fund deposited therein. First, the Trust will, with respect to all unitholders still holding units at scheduled termination and to the extent desired by such unitholders, transfer the registration of their proportionate number of shares of the Funds from the Trust to a registration in the investor's name in lieu of redeeming such shares. Second, the Funds will offer all such unitholders the option of investing the proceeds from the zero coupon obligations in shares of the Funds at net asset value (*i.e.,* without the imposition of the normal sales load). The Funds also will offer unitholders the option of investing all distributions from the Trust during the life of the Trust Series in shares of the Funds at net asset value. Thus, it is anticipated that many of the unitholders will become and remain direct shareholders of the Funds and that many will elect to invest their proceeds of the Trust Series in an account of the Fund.

Applicants' Legal Analysis

1. Applicants seek relief under section 6(c) of the Act from sections 14(a) and 19(b) of the Act and rule 19b–1 thereunder and pursuant to section 17(d) of the Act and rule 17d–1 thereunder.

2. Section 14(a) of the Act requires that investment companies have $100,000 of net worth prior to making a public offering. The Trust will have an initial net worth in excess of $100,000 invested in zero coupon obligations and shares of the Funds. Applicants recognize, however, that because of the Sponsor's intention to sell all the units of the Trust, the Sponsor may be deemed to be reducing the Trust's net worth below the requirements of section 14(a). Applicants will comply in all respects with the requirements of rule 14a–3, which provides an exemption from section 14(a), except that the Trust would not restrict its portfolio to ''eligible trust securities.''

3. Section 19(b) of the Act and rule 19b–1 thereunder provide that, except under limited circumstances, no registered investment company may distribute long-term capital gains more than once every twelve months. Applicants request an exemption from section 19(b) and rule 19b–1 to the extent necessary to permit capital gains earned in connection with the redemption of shares of the Funds to be distributed to unitholders along with the Trust's regular distributions. Applicants believe that the requested exemption is consistent with the purposes of section 19(b) and rule 19b–1 because the dangers of manipulation of capital gains and confusion between capital gains and regular income distributions does not exist in the Trust. Applicants state that the Sponsor has no incentive to redeem or permit the redemption of units in order to generate capital gains. Moreover, because principal distributions are clearly indicated in accompanying reports to unitholders as a return of principal, applicants believe that the danger of confusion is not present in the operations of the Trust.

4. Section 6(c) of the Act provides, in relevant part, that the SEC may by order, exempt any person or class of persons from any provision of the Act or from any rule thereunder, if such exemption is necessary or appropriate in the public interests, consistent with the protection of investors, and consistent with the purposes fairly intended by the policy and provisions of the Act. Applicants believe that the requested relief meets that standards of section 6(c).

5. Section 17(d) of the Act and rule 17d–1 thereunder make it unlawful for any affiliated person of, or principal underwriter for, a registered investment company, or any affiliated person of either of them, acting as a principal, to engage in a joint transaction with the investment company unless the joint transaction has been approved by the SEC. Applicants' proposed arrangements may be a joint transaction under these provisions. Applicants believe that the proposed arrangements are consistent with the provisions, policies, and purposes of the Act, and that participation by each registered investment company is not on a basis less advantageous than that of other participants.

6. Applicants do not request relief under section 12(d)(1) of the Act.[1] Section 12(d)(1)(E) provides that section 12(d)(1) shall not apply to securities purchased by a registered unit investment trust if the securities are the only ''investment securities'' held by the trust. Applicants believe that the U.S. Treasury zero coupon obligations are not ''investment securities'' for purposes of section 12(d)(1)(E)[2] and that the shares of the Funds are the only ''investment securities'' which the Trust will hold. Accordingly, they do not believe relief from section 12(d)(1) is necessary.

Applicants' Conditions

Applicants agree to the following as conditions to the granting of the requested order:

1. The Trustee will not redeem Fund shares except to the extent necessary to meet redemptions of units by unitholders, or to pay Trust expenses should distributions received on fund shares and rebated rule 12b–1 fees prove insufficient to cover such expenses.

2. Any rule 12b–1 fees received by the Sponsor in connection with the distribution of Fund shares to the Trust will be immediately rebated by the Sponsor to the Trustee.

3. All Trust Series will be structured so that their maturity dates will be at least thirty days apart from one another.

4. The Trust and the Sponsor will comply in all respects with the requirements of rule 14a–3, except that the Trust will not restrict its portfolio investments to ''eligible trust securities.''

5. Shares of a Fund which are held by a Series of the Trust will be voted by the Trustee of the Trust, and the Trustee will vote all shares of a Fund held in a Trust Series in the same proportion as all other shares of that Fund not held by the Trust are voted.

6. Any shares of the Funds deposited in any Trust Series or any shares

[1] Section 12(d)(1) limits purchases by registered investment companies of securities issued by other investment companies.

[2] Equity Securities Trust (pub. avail. Jan. 19, 1994).

acquired by unitholders through reinvestment of dividends or distributions or through reinvestment at termination will be made without imposition of any otherwise applicable sales load and at net asset value.

7. The prospectus of each Trust Series and any sales literature or advertising that mentions the existence of a reinvestment option will disclose that shareholders who elect to invest in Fund shares will incur a rule 12b–1 fee.

For the SEC, by the Division of Investment Management, under delegated authority.

Margaret H. McFarland,

*Deputy Secretary.*

[FR Doc. 96–4579 Filed 2–28–96; 8:45 am]

**BILLING CODE 8010–01–M**

**[Rel. No. IC–21773; 812–9882]**

## Van Kampen American Capital, Inc. et al.; Notice of Application

February 23, 1996.

**AGENCY:** Securities and Exchange Commission (''SEC'').

**ACTION:** Notice of Application for Exemption under the Investment Company Act of 1940 (the ''Act'').

**APPLICANTS:** Van Kampen American Capital Equity Trust, Van Kampen American Capital Pennsylvania Tax Free Income Fund, Van Kampen American Capital Tax Free Trust, Van Kampen American Capital Tax Free Money Fund, Van Kampen American Capital Trust, Van Kampen American Capital U.S. Government Trust, Van Kampen American Capital Comstock Fund, Van Kampen American Capital Corporate Bond Fund, Van Kampen American Capital Emerging Growth Fund, Van Kampen American Capital Enterprise Fund, Van Kampen American Capital Equity Income Fund, Van Kampen American Capital Global Managed Assets Fund, Van Kampen American Capital Government Securities Fund, Van Kampen American Capital Government Target Fund, Van Kampen American Capital Growth and Income Fund, Van Kampen American Capital Harbor Fund, Van Kampen American Capital High Income Corporate Bond Fund, Van Kampen American Capital Life Investment Trust, Van Kampen American Capital Limited Maturity Government Fund, Van Kampen American Capital Pace Fund, Van Kampen American Capital Real Estate Securities Fund, Van Kampen American Capital Reserve Fund, Van Kampen American Capital Small Capitalization Fund, Van Kampen American Capital Tax-Exempt Fund, Van Kampen American Capital Texas Tax Free Income Fund, Van Kampen American Capital U.S. Government Trust for Income, and Van Kampen American Capital World Portfolio Series Trust (collectively, the ''Open-End Funds''); Van Kampen American Capital Municipal Income Trust, Van Kampen American Capital California Municipal Trust, Van Kampen American Capital Intermediate Term High Income Trust, Van Kampen American Capital Limited Term High Income Trust, Van Kampen American Capital Prime Rate Income Trust, Van Kampen American Capital Investment Grade Municipal Trust, Van Kampen American Capital Municipal Trust, Van Kampen American Capital California Quality Municipal Trust, Van Kampen American Capital Florida Quality Municipal Trust, Van Kampen American Capital New York Quality Municipal Trust, Van Kampen American Capital Ohio Quality Municipal Trust, Van Kampen American Capital Pennsylvania Quality Municipal Trust, Van Kampen American Capital Trust for Investment Grade Municipals, Van Kampen American Capital Trust for Insured Municipals, Van Kampen American Capital Trust for Investment Grade California Municipals, Van Kampen American Capital Trust for Investment Grade Florida Municipals, Van Kampen American Capital Trust for Investment Grade New Jersey Municipals, Van Kampen American Capital Trust for Investment Grade New York Municipals, Van Kampen American Capital Trust for Investment Grade Pennsylvania Municipals, Van Kampen American Capital Municipal Opportunity Trust, Van Kampen American Capital Advantage Municipal Income Trust, Van Kampen American Capital Advantage Pennsylvania Municipal Income Trust, Van Kampen American Capital Strategic Sector Municipal Trust, Van Kampen American Capital Value Municipal Income Trust, Van Kampen American Capital California Value Municipal Income Trust, Van Kampen American Capital Massachusetts Value Municipal Income Trust, Van Kampen American Capital New Jersey Value Municipal Income Trust, Van Kampen American Capital New York Value Municipal Income Trust, Van Kampen American Capital Ohio Value Municipal Income Trust, Van Kampen American Capital Pennsylvania Value Municipal Income Trust, Van Kampen American Capital Municipal Opportunity Trust II, Van Kampen American Capital Florida Municipal Opportunity Trust, Van Kampen American Capital Advantage Municipal Income Trust II, and Van Kampen American Capital Select Sector Municipal Trust (collectively, the ''Closed-End Funds,'' together the Open-End and Closed-End Funds are the ''Funds''); and Van Kampen American Capital Investment Advisory Corp. and Van Kampen American Capital Asset Management, Inc. (collectively, the last two entities are the ''Advisers'').

**RELEVANT ACT SECTIONS:** Order requested under section 6(c) of the Act for an exemption from sections 13(a)(2), 13(a)(3), 18(a), 18(c), 18(f)(1), 22(f), 22(g), and 23(a) and rule 2a–7 thereunder, under sections 6(c) and 17(b) of the Act for an exemption from section 17(a)(1), and under section 17(d) of the Act and rule 17d–1 thereunder to permit certain joint arrangements.

**SUMMARY OF APPLICATION:** Applicants request an order that would permit the Funds to enter into deferred compensation arrangements with their independent trustees. The requested order would supersede a prior order (the ''Merritt Order'').[1]

**FILING DATES:** The application was filed on December 8, 1995, and amended on January 19, 1996.

**HEARING OR NOTIFICATION OF HEARING:** An order granting the application will be issued unless the SEC orders a hearing. Interested persons may request a hearing by writing to the SEC's Secretary and serving applicants with a copy of the request, personally or by mail. Hearing requests should be received by the SEC by 5:30 p.m. on March 19, 1996, and should be accompanied by proof of service on applicants, in the form of an affidavit or, for lawyers, a certificate of service. Hearing requests should state the nature of the writer's interest, the reason for the request, and the issues contested. Persons who wish to be notified of a hearing may request notification by writing to the SEC's Secretary.

**ADDRESSES:** Secretary, SEC, 450 Fifth Street, N.W., Washington, D.C. 20549. Applicants, One Parkview Plaza, Oakbrook Terrace, Illinois 60181.

**FOR FURTHER INFORMATION CONTACT:** Elaine M. Boggs, Staff Attorney, at (202) 942–0572, or Robert A. Robertson, Branch Chief, at (202) 942–0564 (Division of Investment Management, Office of Investment Company Regulation).

**SUPPLEMENTARY INFORMATION:** The following is a summary of the application. The complete application may be obtained for a fee at the SEC's Public Reference Branch.

[1] *Van Kampen Merritt Trust,* Investment Company Act Release Nos. 20473 (Aug. 11, 1994) (notice) and 20530 (Sept. 6, 1994) (order).

Applicants' Representations

1. Each of the Open-End Funds is a Delaware business trust registered under the Act as an open-end management investment company, except for one which is a Pennsylvania trust. Several of the Open-End Funds are organized as series companies. The Closed-End Funds are either Massachusetts or Pennsylvania trusts and are closed-end management investment companies registered under the Act. The Advisers, wholly-owned subsidiaries of Van Kampen American Capital, Inc., serve as each Fund's investment adviser and are registered under the Investment Advisers Act of 1940.

2. Each Fund has a board of trustees, a majority of the members of which are not ''interested persons'' of such Fund within the meaning of section 2(a)(19) of the Act. Each of the trustees who is not an ''interested person'' receives annual fees which collectively are, and are expected to continue to be, insignificant in comparison to the total net assets of the Funds. Applicants request an order to permit the trustees who are not interested persons and who receive trustee fees from one or more of the Funds (the ''Eligible Trustees'') to elect to defer receipt of all or a portion of their fees pursuant to a deferred compensation plan (the ''Plan''). Under the Plan, the Eligible Trustees could defer payment of trustees' fees (the ''Deferred Compensation'') in order to defer payment of income taxes or for other reasons. Applicants request that relief be extended to any existing or subsequently registered investment company advised by an Adviser or a registered investment adviser under common control or controlled by an Adviser. (Such future funds are also referred to as the ''Funds''.)

3. Certain of the Funds already have deferred compensation plans in effect for their Eligible Trustees pursuant to an existing SEC order [2] (the ''Comstock Order'') while others are relying on the Merritt Order. Funds with existing deferred compensation plans established under the Comstock Order will retain the cash for trustees who elect to defer their compensation and the deferred amounts will earn a return based upon the return of the underlying Fund or the return on such Fund's investment of cash reserves in money market instruments. The proposed Plan, however, is broader and provides for the return on deferred amounts to be based upon the return of the underlying Fund or the return of other Funds in the fund complex and allows Funds to hedge the deferred obligation by purchasing shares of other Funds. Applicants would like all the Funds to be able to rely on the same order and to be subject to the same terms and conditions. The requested order would supersede the Merritt Order but have no effect on the Comstock Order. Each participant in the plans established under the Comstock Order will be given a one-time election to have his or her existing deferred account balance roll over into new accounts established under the requested order.

4. Under the Plan, the deferred fees payable by a Fund to a participating Eligible Trustee will be credited to a book reserve account established by the Fund (a ''Deferred Fee Account''), as of the first business day following the date such fees would have been paid to the Eligible Trustee. The deferred fees will accrue income from and after the date of credit in an amount equal to the amount that would have been earned had such fees (and all income earned thereon) been invested and reinvested in shares of the Funds designated by the respective board of trustees as eligible investments under the Plan (the ''Investment Funds''). In the case of trustees of the Open-End Funds, Investment Funds will be Open-End Funds, and in the case of trustees of the Closed-End Funds, Investment Funds will be Closed-End Funds.

5. The Funds' respective obligations to make payments of amounts accrued under the Plan will be general unsecured obligations, payable solely from their respective general assets and property. The Plan provides that the Funds will be under no obligation to purchase, hold or dispose of any investments under the Plan, but, if one or more of the Funds choose to purchase investments to cover their obligations under the Plan, then any and all such investments will continue to be a part of the respective general assets and property of such Funds.

6. Any participating money market series of a Fund that values its assets in accordance with a method prescribed by rule 2a–7 will buy and hold the Underlying Securities that determine the performance of the Deferred Fee Accounts in order to achieve an exact match between such series' liability to pay deferred fees and the assets that offset such liability. In addition, as a matter of prudent risk management, to the extent an Eligible Trustee selects Investment Funds other than the Fund that pays that trustee's fees, it is intended that the Fund responsible for the Trustee's fees will purchase and hold shares in an amount equal to the designated investment in such Investment Funds (the ''Underlying Securities''). Thus, in cases where a Fund purchases Underlying Securities, the amount of Underlying Securities is expected to match the liability created by credits to the Fund's Deferred Fee Accounts.

7. Payments under the Plan will be made in generally equal annual installments over a five year period beginning on the first day of the year following the year in which the Eligible Trustee's termination of service occurred. In the event of death prior to any distribution, such trustee's Deferred Fee Account will become payable in cash to the trustee's designated beneficiary in equal installments over a five year period. In the event of death after the commencement of the distribution, the balance of such account will be distributed to the designated beneficiary over the remaining portion of the five-year period. The Plan will not obligate any participating Fund to retain a trustee in such a capacity, nor will it obligate any Fund to pay any (or any particular level of) trustees' fees to any director.

Applicants' Legal Analysis

1. Applicants request an order which would exempt the Funds: (a) Under section 6(c) of the Act from sections 13(a)(2), 13(a)(3), 18(a), 18(c), 18(f)(1), 22(f), 22(g), 23(a) and rule 2a–7 thereunder, to the extent necessary to permit the Funds to adopt and implement the Plan; (b) under sections 6(c) and 17(b) of the Act from section 17(a)(1) to permit the Funds to sell securities for which they are the issuer to participating Funds in connection with the Plan; and (c) under section 17(d) of the Act and rule 17d–1 thereunder to permit the Funds to effect certain joint transactions incident to the Plan.

2. Sections 18(a) and 18(f)(1) generally prohibit registered closed-end and open-end investment companies, respectively, from issuing senior securities. Section 18(c) of the Act generally provides that registered closed-end investment companies may not have outstanding more than one class of senior security representing indebtedness. Section 13(a)(2) requires that a registered investment company obtain shareholder authorization before issuing any senior security not contemplated by the recitals of policy in its registration statement. Applicants state that the Plan possesses none of the characteristics of senior securities that led Congress to enact section 18. The Plan would not induce speculative investments, affect control of any Fund,

[2] *American Capital Comstock Fund, Inc.*, Investment Company Act Release Nos. 18098 (Apr. 15, 1991) (notice) and 18144 (May 14, 1991) (order).

confuse investors, or convey a false impression as to the safety of their investments. All liabilities created under the Plan would be offset by equal amounts of assets that would not otherwise exist if the fees were paid on a current basis.

3. Section 22(f) prohibits undisclosed restrictions on transferability or negotiability of redeemable securities issued by open-end investment companies. The Plan would set forth all such restrictions, which would be included primarily to benefit the Eligible Trustees and would not adversely affect the interests of the shareholders of the Open-End Funds.

4. Section 22(g) and 23(a) prohibit registered open-end and closed-end investment companies, respectively, from issuing any of their securities for services or for property other than cash or securities. This provision prevents the dilution of equity and voting power that may result when securities are issued for consideration that is not readily valued. Applicants believe that the Plan would merely provide for deferral of payment of such fees and thus should be viewed as being issued not in return for services but in return for a Fund not being required to pay such fees on a current basis.

5. Section 13(a)(3) provides that no registered investment company shall, unless authorized by the vote of a majority of its outstanding voting securities, deviate from any investment policy that is changeable only if authorized by shareholder vote. Each of the Funds named in the application adopted an investment policy regarding the purchase of shares of other investment companies, which policy could prohibit or restrict such Funds from purchasing shares of other investment companies. The relief requested from section 13(a)(3) would extend only to the named applicants. Applicants believe that relief from section 13(a)(3) is appropriate to enable the affected Funds to invest in Underlying Securities without a shareholder vote. Each Fund will disclose the existence of the Plan in its registration statement. The value of the Underlying Securities will be *de minimis* in relation to the total net assets of the respective Fund, and will at all times equal the value of the Fund's obligations to pay deferred fees (plus any increase in value thereof.)

6. Rule 2a–7 imposes certain restrictions on the investments of ''money market funds,'' as defined under the rule that would prohibit a Fund that is a money market Fund from investing in the shares of any other Fund. Applicants believe that the requested exemption would permit the Fund to achieve an exact matching of Underlying Securities with the deemed investments of the Deferred Fee Accounts, thereby ensuring that the deferred fees would not affect net asset value.

7. Section 6(c) provides, in relevant part, that the SEC may by order, exempt any person or class of persons from any provision of the Act or from any rule thereunder, if such exemption is necessary or appropriate in the public interest, consistent with the protection of investors, and consistent with the purposes fairly intended by the policy and provisions of the Act. Applicants believe that the relief requested satisfies this standard.

8. Section 17(a)(1) generally prohibits an affiliated person of a registered investment company from selling any security to such registered investment company.[3] Applicants assert that section 17(a)(1) was designed to prevent, among other things, sponsors of investment companies from using investment company assets as capital for enterprises with which they were associated or to acquire controlling interest in such enterprises. Applicants believe that the sale of securities issued by the Funds pursuant to the Plan does not implicate the concerns of Congress in enacting this section, but merely would facilitate the matching of each Fund's liability for deferred trustees' fees.

9. Section 17(b) authorizes the SEC to exempt a proposed transaction from section 17(a) if evidence establishes that the terms of the transaction, including the consideration to be paid or received, are reasonable and fair and do not involve overreaching on the part of any person concerned, the transaction is consistent with the policies of the registered investment company, and the general purposes of the Act. Applicants believe that the proposed transaction satisfies the criteria of section 17(b). The finding that the terms of the transaction are consistent with the policies of the registered investment company is predicated on the assumption that relief is granted from section 13(a)(3). Applicants also request relief from section 17(a)(1) under section 6(c) to the extent necessary to implement the Deferred Compensation under the Plan on an ongoing basis.[4]

10. Section 17(d) of the Act makes it unlawful for any affiliated person of a registered investment company, acting as principal, to effect any transaction in which the company is a joint or joint and several participant in contravention of such rules and regulations as the SEC may prescribe. Rule 17d–1 permits an affiliated person to engage in a joint transaction if the SEC issues an order approving the arrangements. Eligible Trustees will not receive a benefit, directly or indirectly, that would otherwise inure to a Fund or its shareholders. Eligible Trustees will receive tax deferral but the Plan otherwise will maintain the parties, viewed both separately and in their relationship to one another, in the same position as if the deferred fees were paid on a current basis. When all payments have been made to a Eligible Trustee, the Eligible Trustee will be no better off, relative to the Funds, than if he or she had received trustees fees on a current basis and invested them in Underlying Securities.

## Applicants' Conditions

Applicants agree that the order granting the requested relief will be subject to the following conditions:

1. Any money market Fund that values its assets in accordance with a method prescribed by rule 2a–7 will buy and hold any Underlying Securities that determine performance of the Deferred Fee Accounts to achieve an exact match between such Funds' liability to pay deferred fees and the assets that offset that liability.

2. If a Fund purchases shares issued by an affiliated Fund, the Fund will vote such shares in the same proportion as the shares of all other shareholders of such affiliated Fund.

For the Commission, by the Division of Investment Management, under delegated authority.

Margaret H. McFarland,

*Deputy Secretary.*

[FR Doc. 96–4665 Filed 2–28–96; 8:45 am]

BILLING CODE 8010–01–M

[3] Section 2(a)(3)(C) of the Act defines the term ''affiliated person'' of another person to include any person directly or indirectly controlling, controlled by, or under common control with such other person. Thus, the Funds may be subject to the prohibitions of section 17(a)(1).

[4] Section 17(b) may permit only a single transaction, rather than a series of on-going transactions, to be exempted from section 17(a). *See Keystone Custodian Funds, Inc.*, 21 S.E.C. 295 (1945).

**[Release No. 34–36880; File No. SR–CBOE–95–70]**

## Self-Regulatory Organizations, Notice of Filing and Immediate Effectiveness of Proposed Rule Change and Amendment Nos. 1 and 2 Thereto by the Chicago Board Options Exchange, Incorporated Relating to Procedures for the Enforcement of Rule 8.51 and Rule 6.43 in the OEX Trading Crowd

February 23, 1996.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (''Act''), 15 U.S.C. 78s(b)(1), notice is hereby given that on December 11, 1995, the Chicago Board Options Exchange, Incorporated (''CBOE'' or ''Exchange'') filed with the Securities and Exchange Commission (''Commission'' or ''SEC'') the proposed rule change as described in Items I, II, and III below, which Items have been prepared by the CBOE. On January 5, 1996, the CBOE filed Amendment No. 1 to its proposal.[1] The Exchange filed Amendment No. 2 to the proposal on February 16, 1996.[2] The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The CBOE proposes to set forth in a new regulatory circular its policy regarding the manner of bidding and offering for size in the OEX trading crowd pursuant to Rule 6.43 (''Manner of Bidding and Offering''). In addition, the Exchange is setting forth its policy regarding the procedures for enforcement in the OEX crowd of firm quotes pursuant to Exchange Rule 8.51 (''Trading Crowd Firm Disseminated Market Quotes''). Finally, the circular will notify the membership that they may be fined, or otherwise disciplined, for violations of the policies pursuant to authority under Rule 6.20 (''Admission to and Conduct on the Trading Floor''). The text of the regulatory circular and the proposed rule change is available at the Office of the Secretary, CBOE and at the Commission.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the CBOE included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The CBOE has prepared summaries, set forth in sections (A), (B), and (C) below, of the most significant aspects of such statements.

*A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change*

The purpose of the proposed rule change is to set forth in a regulatory circular the Exchange's policy and interpretation with respect to the manner of bidding and offering for size in the OEX crowd pursuant to Rule 6.43, and regarding the administration and enforcement in the OEX trading crowd of firm quotes pursuant to Rules 8.51 and 6.20.

Rule 6.43 specifies that bids and offers by market-makers and floor brokers, to be effective, must be made at the post by public outcry. Rule 6.43 is silent regarding whether the bid or offer should specify the number of contracts for which the market-maker or floor broker is bidding or offering. The Exchange believes that it is appropriate and contributes to the operation of a fair and orderly market if a size is specified along with the bid and offer. It has become crowd convention at the OEX post among the market-makers to make bids and offers for twenty contracts unless a different size is specified. Failure to bid or offer for less than twenty contracts without specifying the size would be punishable by a fine, or other disciplinary action, pursuant to Rule 6.20 as described below.

Rule 8.51 requires the trading crowd collectively to be responsible for filling non-broker dealer customer orders, in series as determined by the Exchange's Market Performance Committee, at the displayed bid or offer for up to ten contracts. In OEX, the firm quote rule has been applied to all series. The rule provides that, with respect to the execution of non-broker dealer customer orders, at all times other than during rotation, the trading crowd is required to sell (buy) at least ten (10) contracts at the offer (bid) which is displayed when a buy (sell) order reaches the trading station where the particular option class is trading.

However, Rule 8.51 does not address specifically who in the trading crowd must fill the customer order or how this rule will be enforced against the members of the trading crowd. The Exchange has decided that one method to ensure compliance with Rule 8.51 at the OEX post is to make it clear that members are obligated to remove obsolete quotes. Thus, in order to ensure the operation of a fair and orderly market, the regulatory circular requires a member to remove a bid or offer that is no longer effective. Failure to do so will require that member to satisfy the firm disseminated quote commitment. Alternatively, a Floor Official may fine the offender,[3] or take other disciplinary action.

The regulatory circular also specifies that a member should not cause a bid or offer for OEX options for less than ten contracts to be displayed. However, pursuant to Interpretation .03 to Rule 8.51, public customer orders for less than ten contracts that are represented by a floor broker, unless immediately executed, would have to be displayed.[4] If a market-maker were to cause a quote for just one or two contracts to be displayed, the other market-makers in the crowd would then be forced to honor this individual's quote for up to ten contracts even if every other market-maker in the crowd were bidding and offering a much different market. These quotes for sizes of less than ten contracts tend to be disruptive to the operation of the OEX crowd and interfere with the fair and orderly conduct of business in the crowd.

To enforce the above policies of Rule 6.43 and Rule 8.51, the Exchange is relying upon its authority to fine, or otherwise discipline, members pursuant to Rule 6.20.[5] Paragraph (b) of Rule 6.20 gives Floor Officials authority to fine members and persons associated with members for conduct (i) inconsistent with the maintenance of a fair and orderly market; (ii) apt to impair public confidence in the operations of the Exchange; (iii) inconsistent with the ordinary and efficient conduct of business; or (iv) detrimental to the safety or welfare of any other person. Interpretation .04 to Rule 6.20 makes it clear that violations of Rules 6.43 and

[1] In Amendment No. 1, the CBOE proposes a fine schedule for violations of the policies set forth in the regulatory circular discussed herein. *See Letter from Timothy Thompson, Senior Attorney, CBOE, to James T. McHale, Attorney, Office of Market Supervision (''OMS''), Division of Market Regulation (''Division''), Commission, dated January 3, 1996 (''Amendment No. 1'').*

[2] In Amendment No. 2, the CBOE clarifies that pursuant to Interpretation .03 to Rule 8.51, public customer orders for less than ten contracts that are represented by a floor broker, unless immediately executed, would have to be displayed. *See* Letter from Michael L. Meyer, Esq., Schiff, Hardin & Waite, to James T. McHale, Attorney, OMS, Division, Commission, dated February 16, 1996 (''Amendment No. 2'').

[3] *See infra,* note 5.

[4] *See* Amendment No. 2, *supra* note 2.

[5] For each violation of the policies set forth in the regulatory circular, in each calendar quarter, the Exchange will fine members or associated persons $100 for the first violation, $200 for the second violation, and $300 for the third and subsequent violations. *See* Amendment No. 1, *supra* note 1.

8.51 are activities that may violate the provisions of Rule 6.20(b).[6] Trading Floor Liaison staff will assist the OEX Floor Procedure Committee members in identifying offenders of this policy. Members of the Floor Procedure Committee[7] or other Floor Officials will issue the fines.[8] Members could also be charged with other appropriate rules violations and would be subject to further disciplinary action from the Exchange's Business Conduct Committee.

CBOE believes that its procedures for enforcement of Rule 8.51 and Rule 6.43 in the OEX trading crowd, as contained in a published regulatory circular, are consistent with Section 6 of the Act, in general, and further the objectives of Section 6(b)(5) of the Act in particular, in that they are designed to perfect the mechanisms of a free and open market and to protect investors and the public interest by holding market-makers responsible for honoring the displayed quote and for ensuring that accurate markets are displayed to the public.

*B. Self-Regulatory Organization's Statement on Burden on Competition*

The Exchange does not believe that the proposed rule change will impose any inappropriate burden on competition.

*C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others*

No written comments were solicited or received with respect to the proposed rule change.

[6] In addition to fines, members who violate the policies set forth in the regulatory circular are potentially subject to other forms of discipline. First, pursuant to Interpretation .05 to Rule 6.20, two floor officials may nullify a transaction or adjust its terms if they determine the transaction to have been in violation of Rule 8.51. Second, depending upon the egregiousness of the conduct and the disciplinary history of the individual(s) involved, the Exchange could bring a formal disciplinary action under Chapter 17 of the Exchange's rules. Finally, as with any conduct that concerns an individual's performance standards as a member of a trading crowd, the Market Performance Committee, pursuant to Rules 8.3(a) and 8.60, may take remedial action including suspending or terminating a market-maker's appointment in a class of options. *See* Letter from Timothy Thompson, Senior Attorney, CBOE to James T. McHale, Attorney, Office of Market Supervision, Division of Market Regulation, Commission, dated December 21, 1995.

[7] Interpretation .08 to Rule 6.20 permits members of the OEX Floor Procedure Committee, as one of the two successor committees of the Index Floor Procedure Committee, to perform the functions of a Floor Official in the OEX trading crowd.

[8] Members would be entitled to appeal the fine under Chapter XIX of the Exchange's rules.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Because the foregoing rule change constitutes a stated policy with respect to the meaning, administration, or enforcement of an existing rule, it has become effective pursuant to Section 19(b)(3)(A) of the act and Rule 19b–4 thereunder. At any time within 60 days of the filing of the proposed rule change, the Commission may summarily abrogate such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing. Persons making written submissions should file six copies thereof with the Secretary, Securities and exchange Commission, 450 Fifth Street, N.W., Washington, D.C. 20549. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Section, 450 Fifth Street, N.W., Washington, D.C. 20549. Copies of such filing will also be available for inspection and copying at the principal office of the CBOE. All submissions should refer to the File No. SR–CBOE–95–70 and should be submitted by March 21, 1996.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[9]

Margaret H. McFarland,

*Deputy Secretary.*

[FR Doc. 96–4577 Filed 2–28–96; 8:45 am]

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[9] 17 CFR 200.30–3(a)(12).

**[Release No. 34–36869; File No. SR–CHX–96–06]**

## Self-Regulatory Organizations; Notice of Filing and Immediate Effectiveness of Proposed Rule Change by the Chicago Stock Exchange, Incorporated Relating to the Correction of Possible Ambiguities in the Exchange's GTX Rules

February 22, 1996.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (''Act''), 15 U.S.C. 78s(b)(1), notice is hereby given that on February 5, 1995, the Chicago Stock Exchange, Incorporated (''CHX'' or ''Exchange'') filed with the Securities and Exchange Commission (''Commission'') the proposed rule change as described in Items I, II, and III below, which Items have been prepared by the self-regulatory organization. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Exchange proposes to modify Article XX, Rule 37(a) of the CHX's Rules and Interpretation and Policy .02 thereto, relating to the primary market protection of limit orders designated as good until canceled, executable in the afternoon session (''GTX orders'').[1]

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the self-regulatory organization included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The self-regulatory organization has prepared summaries, set forth in Sections A, B, and C below, of the most significant aspects of such statements.

[1] The Exchange is open for business for two trading sessions during each business day. The CHX's regular auction market trading session is conducted on the floor of the Exchange from 8:30 a.m. to 3 p.m. (3:15 p.m. for trading in Chicago Basket), Central time, Monday through Friday. The second, or afternoon, session is conducted through the Portfolio Trading System from 3:30 p.m. to 5 p.m., Central time, Monday through Friday. The floor of the Exchange is closed during the afternoon session. *See* CHX Article IX, Rule 10.

*A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change*

1. Purpose

In Securities Exchange Act Release No. 29297 (June 13, 1991), 56 FR 28191 (June 19, 1991) (File No. SR–MSE–91–11), the Commission approved on a pilot basis rules relating to the CHX's program to provide primary market protection to limit orders designated as GTX orders.[2] Those rules included Article XX, Rule 37(a) and Interpretation and Policy .02 thereto. In Securities Exchange Act Release No. 33991 (May 2, 1994), 59 FR 23904 (May 9, 1994) (File No. SR–CHX–93–23), the Commission permanently approved the CHX's program. The purpose of the proposed rule change is to correct possible ambiguities in the current text of Rule 37(a) and Interpretation and Policy .02 without making any substantive alterations to the program.

2. Statutory Basis

The proposed rule change is consistent with Section 6(b)(5) of the Act[3] in that it is designed to promote just and equitable principles of trade, to remove impediments to and perfect the mechanism of a free and open market and a national market system and, in general, to protect investors and the public interest.

*B. Self-Regulatory Organization's Statement on Burden on Competition*

The Exchange does not believe that proposed rule change will impose any burden on competition.

*C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants or Others*

The Exchange has neither solicited nor received written comments on the proposed rule change.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

The foregoing rule change constitutes a stated policy, practice or interpretation with respect to the meaning, administration or enforcement of an existing rule of the Exchange and therefore has become effective pursuant to Section 19((b)(3)(A) of the Act[4] and subparagraph (e)(1) of Rule 19b–4 thereunder.[5] At any time within 60 days of the filing of such rule change, the Commission may summarily abrogate such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purpose of the Act.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments, concerning the foregoing. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, N.W., Washington, D.C. 20549. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying at the Commission's Public Reference Section, 450 Fifth Street, N.W., Washington, D.C. 20549. Copies of such filing will also be available for inspection and copying at the principal office of the Exchange. All submissions should refer to File No. SR–CHX–96–06 and should be submitted by March 21, 1996.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.

Margaret H. McFarland,

*Deputy Secretary.*

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[2] The CHX's program requires that Exchange specialists provide primary market protection for GTX orders in securities listed on either the New York Stock Exchange or American Stock Exchange and traded during these exchanges' after-hours closing-price trading sessions. Specifically, the responsible CHX specialist is required to fill GTVVX orders at such closing price, based on the volume that prints in the primary market during its closing-price session. GTX orders may be entered only during the Exchange's regular trading session.

[3] 15 U.S.C. 78f(b)(5).

[4] 15 U.S.C. 78s(b)(3)(4).

[5] 17 CFR 240.19b–4(e)(1).

**[Release No. 34–36876; File Nos. SR–Philadep–95–08]**

## Self-Regulatory Organizations; Philadelphia Depository Trust Company; Notice of Filing of Amendments and Order Granting Accelerated Partial Permanent Approval and Accelerated Partial Temporary Approval of a Proposed Rule Change to Convert the Settlement System for Securities Transactions to a Same-Day Funds Settlement System

February 22, 1996.

On November 3, 1995, the Philadelphia Depository Trust Company (''Philadep'') filed with the Securities and Exchange Commission (''Commission'') a proposed rule change (File Nos. SR–Philadep–95–08) pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (''Act'').[1] On December 19, 1995, Philadep filed an amendment to the proposed rule change.[2] Notice of the proposal as amended was published in the Federal Register on January 9, 1996.[3] On January 8, 1996, Philadep filed an amendment to the proposed rule change to modify its charge-back policy relating to principal and income payments from a same-day reversal policy to a next-day reversal policy.[4] On January 24, 1996, Philadep filed an amendment to the proposed rule change to clarify which participants fund formulas were additive and which were not additive and to make a technical correction to Rule 4, Section 8.[5] On February 5, 1996, Philadep filed an amendment to the proposed rule change to remove certain previously proposed amendments made to Rule 4, Sections 1 and 2, regarding the maintenance and investment of the participants fund and to remove previously proposed allocation procedures between the Philadep participants fund and the Stock Clearing Corporation of Philadelphia (''SCCP'') participants fund.[6] On February 16, 1996, Philadep filed an amendment to the proposed rule change to clarify its inter-

[1] 15 U.S.C. § 78s(b)(1) (1988).

[2] Letter from J. Keith Kessel, Compliance Officer, Philadep, to Peter R. Geraghty, Esq., Division of Market Regulation (''Division''), Commission (December 14, 1995).

[3] Securities Exchange Act Release No. 36681 (January 4, 1996), 61 FR 745.

[4] Letter from William W. Uchimoto, General Counsel, Philadep, to Peter R. Geraghty, Esq., Division, Commission (January 11, 1996).

[5] Letter from William W. Uchimoto, Philadep, to Jerry Carpenter, Esq., Assistant Director, Division, Commission (January 24, 1996).

[6] Letter from J. Keith Kessel, Compliance Officer, Philadep, to Peter R. Geraghty, Esq., Division, Commission (February 5, 1996).

depository delivery procedures.[7] No comment letters were received. For the reasons discussed below, the Commission is granting accelerated temporary approval through August 31, 1996, of the portion of the proposed rule change relating to Philadep's participants fund formulas and interdepository deliver procedures and is granting accelerated permanent approval of the remainder of the proposed rule change.

## I. Description of the Proposal

### *1. Introduction*

The purpose of the proposed rule change is to amend Philadep's rules and procedures to convert Philadep's money settlement system from a next-day funds settlement (''NDFS'') system to a same-day funds settlement (''SDFS'') system. Under the proposed rule change, Philadep intends to provide SDFS depository services for all eligible securities.

In accordance with the SDFS service, Philadep will accept deposits of securities certificates for safekeeping and will provide the full range of SDFS depository services which include, but are not limited to, processing deposits, book-entry deliver and receive orders, withdrawals, pledges, trade confirmations, affirmations, transfers, and dividend and interest payments. Philadep's rules and procedures have been amended to provide for, among other things, the pledging of securities, failure to settle procedures, transaction processing, risk management controls, and money settlement in an expanded SDFS environment.

Pursuant to a joint agency agreement between SCCP and Philadep, SCCP, among other things, effects daily money settlements on behalf of Philadep participants for securities received into and delivered out of participants' accounts at Philadep. On behalf of Philadep, SCCP also processes continuous net settlement (''CNS'') movements from one participant to another, processes all SCCP and Philadep dividend and reorganization settlements, and prepares and renders bills and collects fees from Philadep participants for depository services.

Philadep evaluated the impact of converting to an SDFS system with respect to the operational requirements, liquidity requirements, and overall risk on a joint SCCP/Philadep basis.[8] Philadep estimates that at the time of implementing the proposed modifications, SCCP and Philadep will have combined liquidity resources of over $73 million, consisting of $1.1 million in the Philadep participants fund, $7.3 million in the SCCP participants fund, $4.7 million in unrestricted capital, and $60 million in lines of credit.[9] Philadep will routinely monitor these amounts and assess the need to increase them based on SCCP and Philadep activity levels.

### *2. Risk Management Controls*

Philadep's risk management controls are intended to protect Philadep participants against the inability of a participant to pay for its settlement obligations. Philadep's two primary risk management controls for securities processing are the collateral monitor and the net debit cap. Philadep's collateral monitor and net debit cap analysis were structured to incorporate the netting of SCCP and Philadep settlements. Certain transactions also are not subject to these risk management controls.[10]

#### A. Collateralization

Philadep will operate its SDFS system on a fully collateralized basis. Philadep has designed its collateral monitor to assure that a participant will have sufficient collateral in its account in the event that the participant becomes insolvent and/or fails to pay its end-of-day settlement obligation and Philadep must pledge the collateral to draw on its lines of credit.

Philadep recognizes several sources of collateral. The primary sources of collateral are: (1) participants' required and voluntary deposits to the participants fund; (2) proprietary or firm positions that the participant designates as collateral; (3) securities received versus payment for which the participant has not yet paid (includes CNS deliveries); and (4) securities added to a participant's account but not received versus payment (*e.g.*, deposits, free deliveries, free pledge releases, and reclassification of non-collateral securities) that the participant designates as collateral.

Securities designated as collateral by participants are valued based on the security's closing price on the prior business day less an applicable haircut. Philadep employs haircuts to protect itself and its participants against price fluctuations in collateral in the event that Philadep must liquidate the collateral of an insolvent participant. Moreover, because Philadep may have to borrow against a participant's collateral to finance overnight a participant's failure, Philadep's haircut structure takes into consideration the haircuts imposed by its lending institutions. Ordinarily, banks will not assign the full market value to securities used to collateralize loans. Banks will generally consider the relative price volatility of the collateral and impose a haircut accordingly. Philadep's haircut levels configured by security type are as follows: (1) 10% for equities; (2) 5% for corporate and municipal debt, and (3) 2%, 5%, or up to 100% for money market instruments (depending on their term and investment grade rating). Philadep reserves the right to reprice and modify haircuts intraday if it determines changes to be in the best interest of Philadep and its participants.

Philadep will monitor the collateral in each of the participant's accounts through the use of its collateral monitor. At the start of each business day, Philadep credits each participant's collateral monitor with its participants fund deposit. Philadep updates the collateral monitor throughout the day for each transaction that adds or removes collateral to or from the participant's collateral monitor. At all times, the collateral monitor in a participant's account must be equal to or exceed the participant's ′net settlement obligation. Therefore, the market value of all the collateral less any applicable haircuts in a participant's account must be equal to or exceed the participant's net settlement obligation.

Throughout the day, Philadep will continually verify each participant's collateral value to assure that the deliverer's and receiver's collateral monitor will not become negative as a result of Philadep processing a transaction. If a transaction will cause either the deliverer or the receiver to be undercollateralized, Philadep will prevent the transaction from completing until the participant with the deficient collateral monitor has infused sufficient collateral into its account for the transaction to complete. Transactions that continue to recycle at the end of the processing day will be dropped from the

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[7] Letter from Keith Kessel, Compliance Officer, Philadep, to Peter R. Geraghty, Esq., Division, Commission (February 16, 1996).

[8] SCCP and Philadep are wholly-owned subsidiaries of the Philadelphia Stock Exchange, Inc. SCCP and Philadep have a substantial overlap of participants and strategic business objectives.

[9] As of the date of this order, SCCP and Philadep have secured $20 million in uncommitted lines of credit and $40 million in committed lines of credit.

[10] Under Philadep's proposed rule change, CNS and reclamation activity will be exempt from risk management controls. SCCP and Philadep will continue to process these activities; however, when a participant exceeds its set debit cap as a result of its CNS activity, Philadep may request settlement prepayments to reduce the participant's daily debit. If Philadep does not receive such prepayments, Philadep may reverse unsettled book-entry receives previously accepted to produce a positive collateral position and reduce the net debit to an amount under the net debit cap.

system and must be subsequently reentered by the participant that initially entered the transaction.

B. Net Debit Caps

In addition to collateralization, Philadep's net debit cap procedures will prevent the completion of transactions if completion will cause a participant's individual net debit to exceed its net debit cap. Net debit caps limit the net settlement debits that a participant may incur at any point during the processing day and at the end of the day. Net debit caps are designed to help assure that Philadep will have sufficient liquidity to complete settlement if a participant fails to settle. If a transaction will cause a participant's net settlement debit to exceed its net debit cap, Philadep's SDFS system will not allow the transaction to complete. The transaction will recycle until there is sufficient credit in the account. Most credits result from securities deliveries versus payment; securities pledges for value; principal, dividend, or interest allocations; or settlement progress payments (''SPPs'') wired from a participant to Philadep's account at its designated settling bank. Transactions that continue to recycle at the close of the processing day will be dropped from the system and must be subsequently reentered by the participant who initially entered the transaction.

Each participant's individual net debit cap is determine by a participant's combined net debit history at Philadep and SCCP. Philadep will periodically adjust a participant's net debit cap in relation to the participant's ongoing activity. Philadep will calculate net debit caps using participants' daily net settlement activities and may adjust these figures monthly. A participant's net debit cap will be specifically determined by: (1) an average of the participant's three highest end-of-day net settlement debits over a rolling three-month period to establish a base figure [11] and (2) the participant's base figure multiplied by a factor to determine the participant's individual net debit cap.[12] Individual participants' net debit caps are limited by Philadep's established maximum net debit cap of $40 million. Philadep's maximum net debit cap was set, as explained below, using Philadep's total available liquidity.

Philadep established a minimum net debit cap based on 50% of the combined SCCP and Philadep participants funds. The minimum net debit cap, which is currently estimated to be $3.5 million, will be recalculated and adjusted semi-annually. Despite a participant's base figure, Philadep reserves the right to make adjustments to a participant's net debit cap. Philadep may effect such change for a length of time deemed necessary and appropriate by Philadep's management.

*3. Failure to Settle Procedures*

A. Rule 4(A)

New Rule 4(A) will clarify that Philadep is authorized to pledge, repledge, hypothecate, transfer, create a security interest, and/or assign (''pledge'') to lenders as collateral in the event a participant fails to settle any or all property received by Philadep for Philadep from its participants.[13] This property includes (i) deposits in the participants fund; (ii) the securities or repurchase agreements in which the participants fund is invested overnight; (iii) certain qualifying securities which secure the open account indebtedness of the participant; (iv) securities which have been pledged to Philadep as a voluntary deposit to the participants fund; and (v) any or all securities designated as collateral (collectively, ''allowable assets'').

If Philadep pledges these allowable assets, Philadep will make the appropriate account entries reflecting the creation and transfer of the respective security interest from the participant to Philadep and from Philadep to the lender. Likewise, if a participant designates additional securities as pledged collateral, Philadep will record the security interest for such pledged collateral on its books which reflects the decrease in the account of the pledging participant and the increase in Philadep's account. Philadep will receive these journal entries upon the release and return of any pledged assets, which will reflect a decrease in the account of any pledgee and an increase in the account of the pledgor as appropriate.

B. Settlement Failure

At the end of the processing day, Philadep will provide each participant with a net settlement amount, which will be the aggregate of the end-of-the-day net debits and credits in the participant's SCCP and/or Philadep accounts. Money settlements will occur daily with immediately available funds in the form of fed wire transfers into and out of Philadep's account at its designated settling bank.

In the event a participant or its representative settling bank fails to settle, Philadep will utilize its liquidity resources to finance such participant's unsettled net debit. Philadep will prioritize the order in which it will use the resources. Philadep first will use cash from the participants fund and other immediately available internal sources prior to drawing upon its external lines of credit to secure an extension of credit in connection with the defaulting participant, Philadep shall secure the participant's assets as collateral pursuant to proposed Rule 4(A).

If the participant settles by 10 a.m., Eastern Standard Time, the morning after the default occurs, Philadep will use the settlement payment received to repay the principal and finance charges of the lending bank. Philadep then will return the pledged collateral to the participant. For example, if the defaulting participant is solvent and pays its net debit balance and interest charge in same-day funds on the day after the default, Philadep generally will reverse the procedures followed on the day of the default. Philadep will repay lenders and restore pledged securities.

However, if the defaulting participant remains in default the next business day, Philadep may take the following steps in successive order: (i) apply the defaulting participant's fund deposit to satisfy the participant's obligation; (ii) apply collateral of the defaulting participant which is the subject of incomplete transactions; (iii) apply any collateral of the defaulting participant including collateral which is not subject to incomplete transactions; (iv) if the participant's collateral is exhausted, apply pro rata net credit reductions to all participants that delivered securities to the defaulting participant on the day of the default with such reductions being limited to the amount of the net credit balance of each participant resulting from transactions with the defaulting participant; (v) in the alternative to such net credit reductions, resell to the delivering participants securities that were sold to the defaulting participant on the day of the default; and (vi) make pro rata net credit reductions to all participants with net credit balances including those participants that did not make deliveries to the defaulting participant on that day.

[11] For purpose of calculating a participant's net debit settlement, Philadep includes net CNS settlements.

[12] Factors are based on a sliding scale, ranging from 1 to 2, where lower base figures are multiplied by larger factors and higher base figures are multiplied by smaller factors.

[13] The text of proposed New Rule 4(A) is attached as Exhibit B(2) to File No. SR-Philadep–95–08. The file is available for review in the Commission's Public Reference Room and at the principal office of Philadep.

*4. Paying Agent Charge-Back Procedures*

With respect to principal, dividend, interest, and corporate reorganization payment obligations (''P&I payments''), Philadep will pay participants in same-day funds upon receipt of payment in same-day funds from paying agents for such P&I payments. In order to induce the delivery of P&I payments in same-day funds to Philadep from paying agents that would not otherwise receive such payments from issuers in same-day funds on payable date, Philadep may agree to provide rebates to such paying agents. Philadep will act as the conduit passing along such rebate costs to those participants benefitting from receiving P&I payments in same-day funds.

Under Philadep's SDFS proposal, Philadep will be authorized to charge-back participants that were previously credited with P&I payments if the payment was made in error by the paying agent, the issuer failed to provide the paying agent with sufficient funds to cover the payments, the issuer filed for bankruptcy on or prior to the payable date, or other paying agent default. In order for Philadep to charge-back participants, the paying agent must furnish Philadep a written request within ten business days of the payable date. Philadep also may charge-back participants for any errors made by Philadep including errors as a result of erroneous announcements or payment calculations credited to participants in anticipation of receiving payments from paying agents which Philadep has not received.

Under Philadep's charge-back procedures, Philadep will notify participants of charge-backs initiated by a paying agent one business day prior to the date Philadep includes the charge-back in the participant's daily settlement. Although Philadep usually verifies the facts stated in the notice from the paying agent, Philadep does not have any obligation to do so. If the paying agent notifies Philadep more than ten business days after payment date, Philadep is not required to charge-back the participant's account but will cooperate with the paying agent and the participants to resolve the matter. For Philadep initiated charge-backs, Philadep will give participants one business day notice of the charge-back before Philadep includes the charge-back in the participant's daily settlement. For either charge-back, Philadep reserves the right to impute and recover interest from the respective participants.

*5. Inter-depository Delivery Procedures*

When processing participants' deliveries to The Depository Trust Company (''DTC''), Philadep will employ an immediate update technique whereby a delivering participant's security position, collateral, and settlement accounts are immediately updated if the delivering participant has sufficient securities and collateral to complete the delivery. The delivering participant's position is reduced by the quantity of securities it is delivering, its settlement account is credited for the settlement value of the transaction, and its collateral monitor is increased by the settlement credit it will receive and reduced by the collateral value of the securities it is delivering (provided the securities being delivered are part of the participant's collateral position).

Once a delivery satisfies Philadep's risk management controls and completes at Philadep (*e.g.*, the participant has sufficient securities to make the delivery and the participant's collateral monitor will not become negative because of the delivery), the delivery is sent to DTC where it is subject to DTC's internal risk management controls. In certain instances, DTC's internal risk management controls may prevent a delivery from completing (*i.e.*, the receiving participant may not have sufficient collateral or the receipt will violate the participant's net debit cap) and may cause those deliveries to recycle in DTC's system. Deliver orders and payment orders that fail to successfully complete in DTC's system at the end of each processing day will be returned to Philadep, and Philadep will reverse the deliveries to the original delivering participants. Such reversals will not be subject to Receiver-Authorized Delivery (''RAD'') processing [14] or risk management controls.

*6. Participants Fund*

Rule 4, governing the participants fund, and the procedures regarding the participants fund formulas are being amended to respond to Philadep's increased liquidity needs. Rule 4 and the procedures are being amended to provide for an all cash participants fund. The all cash requirement applies to both the required deposit and any additional or voluntary deposits that participants may make. Participants that choose to make voluntary deposits, in most situations, will be able to increase their level of activity at Philadep. Participants will receive interest rebates from Philadep for deposits in excess of $50,000.

Philadep also has modified the size of the participants fund by amending the participants fund formulas. Rule 4 as amended requires all Philadep participants to maintain a minimum cash deposit of $10,000 in the Philadep participants fund. Philadep will calculate participants' required cash deposit pursuant to the following formulas:

(a) Inactive Accounts: [15] $10,000.00
(b) Specialized Services:
(Maximum $50,000 required with $100 or greater in average monthly billings for either Deposit or Transfer activity)
—Deposit Activity—$25,000.00 plus
—Transfer Activity—$25,000.00
(c) Participants not doing Specialized Service activity with service fees of $100 or greater in average monthly billings. The greater of either:
(1) $25,000, or;
(2) 1% of the average of the three highest net debits over the past three months (rounded to the next $5,000 increment).

Philadep will recalculate each participant's deposit requirement at the end of each month based on a participant's activity over the previous three months. Philadep will notify its participants of any required deposit increases and the amount of such additional deposit within ten business days of the end of the month. Participants whose deposit requirements have decreased will be notified at least quarterly although they may inquire and withdraw excess deposits monthly. Participants may leave excess cash deposits in the participants fund.

II. Discussion

Section 17A(b)(3)(F) of the Act [16] requires that the rules of a clearing agency be designed to promote the prompt and accurate clearance and settlement of securities transactions and to assure the safeguarding of securities and funds which are in the custody or control of the clearing agency or for which it is responsible. The Commission believes that Philadep's proposed rule change is consistent with Philadep's obligations under Section 17A(b)(3)(F) to promote the prompt and accurate clearance and settlement of securities transactions because the proposal converts Philadep's money

[14] RAD allows a participant to review and either approve or cancel incoming deliveries before they are processed in Philadep's system.

[15] Philadep's procedures define inactive account to mean an account that has less than $100 of average monthly billings.

[16] 15 U.S.C. § 78q–1(b)(3)(F) (1988).

settlement system from an NDFS system to an SDFS system. Philadep's conversion to an SDFS system should help reduce risk by, among other things, eliminating overnight participant credit risk. The SDFS system also should reduce risk by achieving closer conformity with the payment methods used in the derivatives markets, government securities markets, and other markets.

The Commission also believes the proposal is consistent with Philadep's obligations to assure the safeguarding of securities and funds in its custody or control because Philadep's SDFS proposal provides certain protections for Philadep and its participants from financial loss associated with member defaults and insolvencies. The rule change contains several risk management controls that are intended to protect Philadep and its participants by limiting Philadep's exposure from one or more participants' inability to fulfill its or their settlement obligations to an account within Philadep's liquidity resources. Those protections include an all cash SDFS participants fund,[17] individual net debit caps, a fixed maximum net debit cap of $40 million, and the application of the collateral monitor. In addition, Philadep has increased its liquidity resources by retaining additional committed and uncommitted lines of credit totaling $60 million.

However, the Commission continues to have concerns about the adequacy of Philadep's participants fund formulas in providing a sufficient source of cash liquidity and the formulas' conformity with the standards set forth by the Division.[18] The Commission believes clearing agencies must establish an appropriate level of clearing fund contributions based, among other things, on its assessment of the risks to which it is subject.

Althouth Philadep submitted its assessment of the risks presented by its conversion to an SDFS system and the risks posed by its participants and their type of depository activities, the Commission desires a more thorough analysis. Furthermore, the Commission believes Philadep's recent depository arrangement with the West Canada Depository Trust Company presents additional risks that were not present when Philadep conducted its original risk assessment. Under the proposed rule change, Philadep's participants fund formulas do not take into consideration a participants' level of depository activity. Rather, the formulas are fixed based on the type of depository services used by the participant. The Commission has concerns about whether the size of the participants fund will be sufficient because the formulas are not based on participants' levels of depository activities. For these reasons, the Commission is temporarily approving the portion of the proposed rule change relating to the participants fund formulas through August 31, 1996.

During the period of temporary approval, the Commission will monitor and analyze the adequacy of the participants fund formulas in an SDFS environment. In this regard, the Commission requests that Philadep submit prior to filing for permanent approval of the participants fund formulas a detailed report including (1) a description of the different types of participants at Philadep, the types of depository activities the participants conduct, and the number of each type of participant, and (2) a detailed discussion of the types of risks these participants and their activities pose and the measure Philadep will take to mitigate the risks.

In addition, the Commission is concerned about Philadep's proposed inter-depository delivery procedures. Under Philadep's proposed inter-depository delivery procedures, Philadep will immediately update a participant's account for delivery orders and payment orders sent to DTC participants through the interface. In the event a delivery fails to complete at DTC by the end of the day, the procedures provide a mechanism by which Philadep will reverse the transaction to the delivering Philadep participant without subjecting the reversal to risk management controls. Philadep has represented that the expected volume of deliveries through the interface and the possibility of such reversal procedures being employed are minimal. However, the Commission is concerned that Philadep's proposed inter-depository delivery procedures could create the situation where an inter-depository reversal resulting from an uncompleted delivery to a DTC participant forces Philadep participant to violate its net debit cap near the end of the day. Therefore, the Commission is temporarily approving the portion of the proposed rule change relating to the inter-depository delivery procedures through August 31, 1996, so that the Commission and Philadep can monitor the interface activity before the procedures become permanent.

During the period of temporary approval, Philadep has agreed to submit monthly reports to the Commission concerning the number of inter-depository reversals performed pursuant to the proposed procedures that caused participants to violate their net debit caps. The Commission encourages Philadep to examine and consider future enhancements to the interface to provide a mechanism through which Philadep participants can receive real-time notification of transactions pending at DTC.

Philadep has requested that the Commission find good cause for approving the proposed rule change prior to the thirtieth day after the date of publication of notice of filing of amendments. The Commission finds good cause for approving the proposed rule change prior to the thirtieth day after the date of publication of notice of filing of amendments because the proposed rule change modifies Philadep's rules in anticipation of Philadep's conversion to an SDFS system on February 22, 1996. Accelerated approval of the proposal will allow Philadep to effect the conversion and to implement the procedures provided under the proposed rule change on that date.

## III. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, N.W., Washington, D.C. 20549. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. § 552, will be available for inspection and copying in the Commission's Public Reference Room, 450 Fifth Street, N.W., Washington, D.C. 20549. Copies of such filing will also be available for inspection and copying at the principal office of Philadep. All submissions should refer to the file number SR–

[17] Pursuant to Philadep Rule 4, Philadep is restricted from investing the cash in the participants fund in any investment other than U.S. Government obligations or any other investments which provide safety and liquidity of the principal invested. The Commission has interpreted this rule to mean that Philadep is prohibited from investing the Philadep participants fund directly or through SCCP in the specialists financing program operated by SCCP. Letter from Jerry W. Carpenter, Assistant Director, Division, Commission, to William W. Uchimoto, General Counsel, Philadep (February 15, 1996).

[18] Securities Exchange Act Release No. 16900 (June 17, 1980), 45 FR 41920 (order approving standards for clearing agency registration).

Philadep–95–08 and should be submitted by March 21, 1996.

It is therefore ordered, pursuant to Section 19(b)(2) of the Act, that the proposed rule change (File Nos. SR–Philadep–95–08) be, and hereby is, temporarily approved through August 31, 1996, for those sections of the proposed rule change relating to Philadep's participants fund formulas and inter-depository delivery procedures and permanently approved for the remainder of the proposed rule change.

For the Commission by the Division of Market Regulation, pursuant to delegated authority.[19]

Margaret H. McFarland,

*Deputy Secretary.*

[FR Doc. 96–4576 Filed 2–28–96; 8:45 am]

**BILLING CODE 8010–01–M**

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**[Release No. 34–36875; File Nos. SR–SCCP–95–06]**

## Self-Regulatory Organizations; Stock Clearing Corporation of Philadelphia; Notice of Filing of Amendments and Order Granting Accelerated Partial Permanent Approval and Accelerated Partial Temporary Approval of a Proposed Rule Change to Convert the Settlement System for Securities Transactions to a Same-Day Funds Settlement System

February 22, 1996.

On November 3, 1995, the Stock Clearing Corporation of Philadelphia (''SCCP'') filed with the Securities and Exchange Commission (''Commission'') a proposed rule change (File Nos. SR–SCCP–95–06) pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (''Act'').[1] On December 19, 1995, SCCP filed an amendment to the proposed rule change.[2] Notice of the proposal as amended was published in the Federal Register on January 9, 1996.[3] On January 24, 1996, SCCP filed an amendment to the proposed rule change to clarify which participants fund formulas were additive and which were not additive, to remove the maximum contribution in the formula for full service continuous net settlement (''CNS'') activity, and to make a technical correction to Rule 4, Section 8.[4] On February 5, 1996, SCCP filed an amendment to the proposed rule change to remove certain proposed amendments made to Rule 4, Sections 1 and 2, regarding the maintenance and investment of the participants fund and to remove allocation procedures between the SCCP participants fund and the Philadelphia Depository Trust Company (''Philadep'') participants fund.[5] No comment letters were received. For the reasons discussed below, the Commission is granting accelerated temporary approval through August 31, 1996, of the portion of the proposed rule change relating to SCCP's participants fund formulas and is granting accelerated permanent approval of the remainder of the proposed rule change.

### I. Description of the Proposal

The purpose of the proposed rule change is to amend SCCP's rules and procedures to convert SCCP's money settlement system from a next-day funds settlement (''NDFS'') system to a same-day funds settlement (''SDFS'') system. SCCP intends to support Philadep in providing participants full SDFS clearing and depository services for all eligible securities.[6]

SCCP evaluated the impact of converting to an SDFS system with respect to the operational requirements, liquidity requirements, and overall risk on a joint SCCP/Philadep basis.[7] Pursuant to a joint agency agreement between SCCP and Philadep, SCCP, among other things, effects daily money settlements on behalf of Philadep and its participants for securities received into and delivered out of participants accounts. SCCP on behalf of Philadep also processes continuous net settlement (''CNS'') movements from one participant to another, processes all SCCP and Philadep dividend and reorganization settlements, and prepares and renders bills for Philadep and collects fees from Philadep participants for depository services.

SCCP is amending several of its rules and procedures to accomplish the conversion to SDFS. SCCP Rule 1, which defines terms used throughout SCCP's rules, is being amended to add certain definitions related to the conversion to an SDFS system.[8]

SCCP Rule 10, which governs money settlements, is being amended to provide that all payments must be in same-day funds. Rule 27, regarding SCCP acting as agent for Philadep, currently provides that SCCP will act to effect daily money settlements on behalf of those organizations or entities which are participants of both SCCP and Philadep. SCCP Rule 27 is being amended to further clarify that SCCP will serve as the agent for money settlements for all participants transacting business with either SCCP or Philadep.

Rule 4, governing SCCP's participants fund, and the procedures regarding the participants fund formulas are being amended to respond to SCCP's increased liquidity needs. Together, Rule 4 and the procedures are being amended to provide for an all cash participants fund. The all cash requirement applies to both the required deposit and any additional or voluntary deposits that participants may make. Participants that choose to make voluntary deposits in most situations will be able to increase their level of activity at SCCP and will receive interest rebates from SCCP for deposits in excess of $50,000.

SCCP also has modified the size of the fund by amending the participants fund formulas. Together, Rule 4 and the procedures now require all SCCP participants to maintain a minimum cash deposit of $10,000 in the SCCP participants fund. Under its procedures, SCCP will calculate participants' required cash deposits pursuant to the following formulas:

(a) Inactive Account—The contribution of an Inactive Participant is set at a uniform rate of $10,000. Inactive is defined as twenty or fewer trades on average per month.

(b) Full Service (''CNS'') Account—The contribution of a CNS Participant is based upon the larger of: (1) The participant's monthly average of trading activity during the preceding quarter, $1,000 for every twenty-five trading units of one hundred shares; or (2) the participant's aggregate dollar amount of all long trades at their execution price for each quarter divided by the number of days in such quarter multiplied by two percent. The required contributions are rounded upward to $5,000 increments, and the average is a rolling average.

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[19] 17 CFR 200.30–3(a)(12) (1995).

[1] 15 U.S.C. § 78s(b)(1) (1988).

[2] Letter from J. Keith Kessel, Compliance Officer, SCCP, to Peter R. Geraghty, Esq., Division of Market Regulation (''Division''), Commission (December 14, 1995).

[3] Securities Exchange Act Release No. 36671 (January 3, 1996), 61 FR 677.

[4] Letter from William W. Uchimoto, SCCP, to Jerry Carpenter, Esq., Assistant Director, Division, Commission (January 24, 1996).

[5] Letter from J. Keith Kessel, Compliance Officer, SCCP, to Peter R. Geraghty, Esq., Division, Commission (February 5, 1996).

[6] For a description of Philadep's SDFS system, refer to Securities Exchange Act Release No. 36681 (January 4, 1996), 61 FR 7451 [File No. SR–Philadep–95–08] (notice of filing of a proposed rule change).

[7] SCCP and Philadep are wholly-owned subsidiaries of the Philadelphia Stock Exchange, Inc. SCCP and Philadep have a substantial overlap of participants and strategic business objectives.

[8] The specific terms being defined in SCCP's rules are attached as Exhibit B to File No. SR–SCCP–95–06. The file is available for review in the Commission's Public Reference Room and at the principal office of SCCP.

(c) Regional Interface Operations (''Rio'') Account—The contribution of a RIO Participant is based on the participant's monthly average of trading activity during the preceding quarter, $1,000 for every twenty-five trading units of one hundred shares (with a $10,000 minimum and a $75,000 maximum contribution). The required contributions are rounded upward to $5,000 increments. RIO is defined as a participant account whereby the participant elects to settle with a clearing corporation other than SCCP.

(d) Layoff Account—The contribution of a Layoff Participant is set at a uniform rate of $25,000. A Layoff Participant is defined as a participant account whereby the participant elects to settle with a clearing corporation other than SCCP for trades not executed on the Philadelphia Stock Exchange.

(e) Specialist Margin Account—The contributions of a Specialist Margin Participant is set at a uniform rate of $35,000.

(f) Non-Specialist Margin Account—The contribution of a Non-Specialist Margin Participant is set at a uniform rate of $35,000.

SCCP will recalculate each participant's fund deposit requirement at the end of each month based on the previous three months prior to the most recent month. SCCP will notify its participants of any required deposit increases and the amount of such additional deposit within ten business days of the end of the month. Participants whose deposit requirements have decreased will be notified at least quarterly although they may inquire and withdraw excess deposits monthly. Participants may leave excess cash deposits in the participants fund.

SCCP estimates that at the time of implementing the proposed modifications, SCCP and Philadep will have combined liquidity resources of over $73 million consisting of $7.3 million in the SCCP participants fund, $1.1 million in the Philadep participants fund, $4.7 million in unrestricted capital, and $60 million in lines of credit.[9] SCCP will routinely monitor these amounts and assess the need to increase liquidity resources over time based on SCCP and Philadep activity levels.

## II. Discussion

Section 17A(b)(3)(F) of the Act[10] requires that the rules of a clearing agency be designed to promote the prompt and accurate clearance and settlement of securities transactions and to assure the safeguarding of securities and funds which are in the custody or control of the clearing agency or for which it is responsible. The Commission believes that SCCP's proposed rule change is consistent with SCCP's obligations under Section 17A(b)(3)(F) to promote the prompt and accurate clearance and settlement of securities transactions because the proposal converts SCCP's money settlement system from a NDFS system to a SDFS system. The conversion to a SDFS system should help reduce risk by, among other things, eliminating overnight participant credit risk. The SDFS system also should reduce risk by achieving closer conformity with the payment methods used in the derivatives markets, government securities markets, and other markets.

The Commission believes the proposal is consistent with SCCP's obligations to assure the safeguarding of securities and funds in its custody or control because the proposed rule change converts SCCP's participants fund to an all cash fund which should increase the liquidity of the fund. In addition, SCCP has increased its liquidity resources by retaining additional committed and uncommitted lines of credit totaling $60 million.

However, the Commission continues to be concerned about (1) The adequacy of SCCP's participants fund formulas in providing a sufficient source of cash liquidity and (2) the formulas' conformity with the standards set forth by the Division.[11] The Commission believes that clearing agencies operating SDFS systems must have a sufficient liquidity from combination of cash and lines of credit to ensure that settlement occurs at the end of the business day even if a participant fails to settle with the clearing agency or if the clearing agency experiences a systems problem. The Commission further believes that a clearing agency must have on hand an amount of accessible cash which will enable the clearing agency to fund settlement for most participant failures or systems problems without having to immediately draw on its lines of credit (*i.e.*, a clearing agency's lines of credit should be its secondary source of liquidity and not its primary source). The Commission is concerned with the level of cash provided by SCCP's formulas and whether that level of cash liquidity is sufficient given the increased demand for liquidity under an SDFS environment and SCCP's use of the participants fund to finance specialists purchases.[12]

The Commission believes that clearing agencies must establish an appropriate level of clearing fund contributions based on, among other things, its assessment of the risks to which it is subject.[13] Although SCCP submitted to the Commission its assessment of the risks presented by its conversion to an SDFS system and the risks posed by its participants and their clearing activities, the Commission desires a more thorough analysis. For example, the Commission believes SCCP's recent clearing arrangement with the West Canada Clearing Corporation (''WCCC'') presents additional risks that were not present when SCCP conducted its original risk assessment. Historically, WCCC's activity at the Midwest Clearing Corporation (''MCC'') was mostly net sell transactions which meant WCCC often had an obligation to deliver a large volume of securities to MCC. Under the proposed rule change, SCCP's participants fund formulas do not take into consideration a participant's short positions and the risks the short positions pose to SCCP. Therefore, the Commission is temporarily approving through August 31, 1996, the portion of the proposed rule change relating to the participants fund formulas.

During the period of temporary approval, the Commission will monitor and analyze the adequacy of the participants fund formulas in an SDFS environment. In this regard, the Commission requests that SCCP submit prior to filing for permanent approval of the participants fund formulas a detailed report including (1) a description of the different types of participants at SCCP, the types of clearing activities the participants conduct, and the number of each type of participant, and (2) a detailed discussion of the types of risks these participants and their activities pose and the measures SCCP will take to mitigate the risks. Furthermore, the Commission requests that SCCP submit a complete risk assessment analysis that calculates the cumulative risks associated with SDFS, specialist financing, increased short position activity, and increased clearing activity of over-the-counter securities.

SCCP has requested that the Commission find good cause for approving the proposed rule change prior to the thirtieth day after the date of publication of notice of filing of amendments. The Commission finds good cause for approving the proposed

[9] As of the date of this order, SCCP and Philadep have secured $20 million in uncommitted lines of credit and $40 million in committed lines of credit.

[10] 15 U.S.C. § 78q–1(b)(3)(F) (1988).

[11] Securities Exchange Act Release No. 16900 (June 17, 1980), 45 FR 41920 (order approving standards for clearing agency registration).

[12] For a complete description of SCCP's specialist financing program, refer to Securities Exchange Act Release No. 20221 (September 23, 1983), 48 FR 45167 (order approving full registration of DTC, SCCP, MSTC, OCC, MCC, PSDTC, PCC, NSCC, and Philadep).

[13] *Supra* note 11.

rule change prior to the thirtieth day after the date of publication of notice of filing of amendments because the proposed rule change modifies SCCP's rules in anticipation of SCCP's conversion to an SDFS system on February 22, 1996. Accelerated approval of the proposal will allow SCCP to effect the conversion and to implement the procedures provided under the proposed rule change on that date.

III. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, N.W., Washington, D.C. 20549. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. § 552, will be available for inspection and copying in the Commission's Public Reference Room, 450 Fifth Street, N.W., Washington, D.C. 20549. Copies of such filing will also be available for inspection and copying at the principal office of SCCP. All submissions should refer to the file number SR–SCCP–95–06 and should be submitted by March 21, 1996.

It is therefore ordered, pursuant to Section 19(b)(2) of the Act, that the proposed rule change (File Nos. SR–SCCP–95–06) be, and hereby is, temporarily approved through August 31, 1996, for those sections of the proposal relating to the participants fund formulas and permanently approved for the remainder of the proposed rule change.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[14]

Margaret H. McFarland,

*Deputy Secretary.*

[FR Doc. 96–4578 Filed 2–28–96; 8:45 am]

**BILLING CODE 8010–01–M**

## SMALL BUSINESS ADMINISTRATION

### Surety Bond Guarantee Program Fees

**AGENCY:** Small Business Administration (SBA).

**ACTION:** Notice.

**SUMMARY:** This Notice establishes the fees payable by Principals and Sureties participating in SBA's Surety Bond Guarantee Program (13 CFR Part 115).

**FOR FURTHER INFORMATION CONTACT:** Barbara Brannan, Office of Surety Guarantees, (202) 205–6540.

**SUPPLEMENTARY INFORMATION:** In a final rule published on January 31, 1996, SBA indicated that it was completing an analysis of the performance of the Surety Bond Guarantee Program and was evaluating whether changes in the Principal's guarantee fee and the Surety's guarantee fee were warranted. See 61 FR 3266, 3269 (January 31, 1996). SBA has completed that review and is setting the Principal's and the Surety's fees in this Federal Register Notice. Capitalized terms used in this Notice have the meanings assigned to such terms in 13 CFR § 115.10.

Beginning March 1, 1996 and ending on April 30, 1996, the following guarantee fees will be in effect:

(1) The guarantee fee payable by Principals under 13 CFR §§ 115.32(b) and 115.66 will be $6.00 per thousand dollars of the Contract amount.

(2) The guarantee fee payable by Prior Approval Sureties under 13 CFR § 115.32(c) and by PSB Sureties under 13 CFR § 115.66 will be 20% of the bond Premium.

Beginning May 1, 1996, the following guarantee fees will become effective:

(1) The guarantee fee payable by Principals under 13 CFR §§ 115.32(b) and 115.66 will be $7.45 per thousand dollars of the Contract amount.

(2) The guarantee fee payable by Prior Approval Sureties under 13 CFR § 115.32(c) and by PSB Sureties under 13 CFR § 115.66 will be 23% of the bond Premium.

The guarantee fees scheduled to take effect on May 1, 1996 are higher than the guarantee fees currently in place in the Surety Bond Guarantee Program, but are lower than the fees SBA had proposed for the Program in the proposed rule published on November 27, 1995. See 60 FR 58263 (November 27, 1995). SBA's proposal to increase the Principal's fee to $8.00 per thousand dollars of the Contract amount and the Surety's fee to 25% of the bond Premium was not well-received by the participants in the Program. Most of the comments submitted to SBA predicted serious adverse consequences for Principals and for the Program if the fees were increased as proposed.

After a careful review of these comments and of Program performance and trends, it has been determined that some increase in the fees is, nevertheless, necessary to increase the reserves in the Program's revolving fund to cover potential unfunded liabilities should the Program be terminated. While improvements in Program operations have resulted in decreased claims payments and increased claims recoveries over the past several years, current reserves in the revolving fund are not sufficient to satisfy all such unfunded Program liabilities. The increased fees established in this Notice have been calculated as the minimum necessary to bridge this gap over a period of years. The increases are not scheduled to go into effect until May 1, 1996 in order to allow sufficient time for Program participants to make any necessary adjustments to their accounting systems.

SBA will continue to evaluate the performance of the Surety Bond Guarantee Program to determine whether the fee increases adopted today remain necessary, and to monitor their effect on both Principals and the Program generally. If the Program continues to perform as well as it has in the recent past, SBA would expect, eventually, to be able to reduce Program fees.

Any future changes in the fee amounts will be published by SBA in the form of a Notice in the Federal Register.

Information on other requirements concerning the fees may be found at 13 CFR §§ 115.32 and 115.66.

Dated: February 23, 1996.

Philip Lader,

*Administrator.*

[FR Doc. 96–4612 Filed 2–28–96; 8:45 am]

**BILLING CODE 8025–01–P**

## DEPARTMENT OF TRANSPORTATION

### Federal Transit Administration

### Environmental Impact Statement for the Metrorail Extension to Largo Town Center, Prince Georges County, Maryland

**AGENCY:** Federal Transit Administration, DOT.

**ACTION:** Notice of intent to prepare an Environmental Impact Statement (EIS).

**SUMMARY:** The Federal Transit Administration (FTA) and the Maryland Mass Transit Administration (MTA), in cooperation with Prince George's County and the Washington Metropolitan Area Transit Authority (WMATA), intend to prepare an Environmental Impact Statement (EIS) for a Metrorail Extension from the Addison Road Metrorail Station to Largo

[14] 17 CFR 200.30–3(a)(12) (1995).

Town Center in Prince George's County, Maryland. The EIS, which will be performed concurrently with Preliminary Engineering (PE), is being prepared in conformance with the National Environmental Policy Act (NEPA), the Maryland Environmental Policy Act (MEPA), and relevant local regulations and ordinances of Prince George's County. Other key supporting agencies include the Metropolitan Washington Council of Governments (MWCOG), and the Maryland-National Capital Park and Planning Commission (M-NCPPC).

The EIS will evaluate transportation improvements in the corridor between the Addison Road Metrorail Station and Largo Town Center in Prince George's County. Transportation alternatives proposed for consideration in the project area include: (1) The No-Build option, under which the existing and programmed bus, rail, and roadway improvements in the study area would be assumed to be implemented; (2) a Transportation Systems Management (TSM) alternative which consists of increased coverage of the bus service network; and (3) the Metrorail Extension from the Addison Road Metrorail Station to Largo Town Center, a three mile (4.8 kilometer), two station addition to the region's rail transit system. Options to mitigate adverse impacts and to support local land use will be considered.

Scoping Process—The Scoping Meeting will be held on: Wednesday, March 27, 1996, 6:00–9:00 p.m., Thomas G. Pullen Arts Magnet School, 700 Brightseat Road, Landover, Maryland.

A sign language interpreter will be available for the hearing impaired. A TDD number is also available: (410) 539–3497. The building is accessible to persons with disabilities.

The purpose of the Public Scoping Meeting is to provide interested individuals with an introduction to and an overview of the EIS and PE processes, and to offer the opportunity for comments on the significant issues and impacts to be addressed in the EIS. Comments may be submitted orally or in writing at the Scoping Meeting or mailed to Mr. Harvey Flechner, Project Manager, Maryland Mass Transit Administration, William Donald Schaefer Tower, 6 Saint Paul Street, Baltimore, Maryland 21202–1614 during the Scoping comment period which ends Monday, April 15, 1996. The MTA will address comments received during the Scoping period during the preparation of the Draft Environmental Impact Statement (DEIS).

The Scoping Meeting will begin with an ''open house'' where attendees will be able to view graphics and discuss the project with project representatives. A presentation on the project will be given at 7:30 p.m., followed by additional opportunity for questions and answers. Scoping materials will be available at the meeting or in advance of the meeting by contacting Mr. Harvey Flechner at (410) 767–3786 or the Deputy Project Manager, Mr. Andy Smith at (410) 767–3597.

**FOR FURTHER INFORMATION CONTACT:** Mr. Alfred Lebeau, Transportation Program Specialist, Federal Transit Administration, Region III, (215) 656–6900.

**SUPPLEMENTARY INFORMATION:**

I. Scoping

FTA and the MTA invite interested individuals, organizations, and federal, state and local agencies to participate in defining the alternatives to be evaluated in the EIS and identifying any significant social, economic, or environmental issues related to the alternatives. Scoping comments may be made at the Public Scoping Meeting or in writing; See ''Scoping Process'' section above for locations and times. During Scoping, comments should focus on identifying specific social, economic or environmental impacts to be evaluated and suggesting alternatives which are more cost effective or have less environmental impacts while achieving similar transit objectives.

II. Background

In 1990, the Maryland Department of Transportation (MDOT), in cooperation with Prince George's County, the Maryland-National Capital Park and Planning Commission (M–NCPPC), the City of Bowie, the Washington Metropolitan Area Transit Authority (WMATA), and the Metropolitan Washington Council of Governments (MWCOG) began work on the Addison Road to Bowie Corridor Alternatives Analysis/Preliminary Environmental Impact Study (AA/PEIS), which followed the Federal Transit Administration's (FTA) technical guidelines for an Alternatives Analysis/ Draft Environmental Impact Statement (AA/DEIS). Planning work was performed to provide preliminary cost and impact information for evaluating a set of alternatives designed to address the transportation needs in the corridor. The alternatives included bus, light rail, and Metrorail extending from the present terminus of the Washington Metrorail Blue Line at Addison Road to Largo and Bowie. Major aspects of this study involved: (a) Screening a variety of alignment options; (b) identifying a list of alternatives for further evaluation; (c) detailing an analysis of the transportation, environmental and financial effects of the alternatives; and (d) documenting the results.

An extensive public involvement program, including public meetings, newsletters, and a score of meetings with interested groups was central to the development, refinement, and evaluation of the alternatives. Federal and State resource agencies were also consulted during the study. In addition, the U.S. Army Corps of Engineers and the U.S. Fish and Wildlife Service participated in a field visit to review wetlands and related environmental issues. As a result of this coordination, the alignment of several alternatives was shifted to avoid and/or minimize potential impacts.

The 1993 Addison Road to Bowie Corridor AA/PEIS planning process led to the selection of the Metrorail Extension to Largo Town Center as the preferred alternative in meeting the transportation needs of the corridor, in conformance with the Major Investment Study (MIS) requirements. The Metrorail Extension to Largo Town Center was also approved as part of the National Capital Region's Transportation Improvement Program (TIP), for an Environmental Impact Statement (EIS), and Preliminary Engineering (PE), as well as included in the Region's Constrained Long Range Plan (CLRP) for construction, and in the Maryland Department of Transportation's Statewide Transportation Improvement Program (STIP).

In 1991, the U.S. Congress passed the Intermodal Surface Transportation Efficiency Act (ISTEA) which authorized $5 million for the preparation of the federal Environmental Impact Statement (EIS) and Preliminary Engineering for the Metrorail Extension to Largo. The FTA has granted the MTA approval to incur costs for EIS and PE work without prejudice to possible future federal funds up to $5 million. Based on the decision to include the Metrorail Extension to Largo in the regional CLRP, the MTA is proceeding to the EIS and Preliminary Engineering phase of the project. Preparation of the federal EIS will include circulation of a Draft EIS (DEIS) for review and public comment.

III. Description of Study Area and Project Need

The study area and corridor are wholly within Prince George's County, beginning at the existing Addison Road Metrorail Station. The study area is also bounded by Sheriff Road on the north,

Central Avenue (MD 214) on the south, and Landover Road on the east. Rail transit service to and from Washington DC to the study corridor is available on the Metrorail Blue Line, provided by the Washington Metropolitan Area Transit Authority (WMATA). Existing traffic is primarily carried by Central Avenue (MD 214) and I–95/I–495 (the Capital Beltway) with high traffic volumes and poor level-of-service at many of the signalized intersections along Central Avenue and along major portions of the Capital Beltway.

The proposed Metrorail Extension will provide rail transit service to the rapidly developing areas in the Largo Town Center. The proposed extension will also support economic development while contributing to higher transit use to and from Washington, DC employment centers. This increased transit ridership will improve cross-county public transportation and help achieve regional clean air goals.

IV. Alternatives

Transportation alternatives proposed for consideration in the project area include: (1) The No-Build option, under which the existing and programmed bus, rail, and roadway improvements in the study area would be assumed to be implemented; (2) a Transportation Systems Management (TSM) alternative which consists of increased coverage of the bus service network; and (3) the Metrorail Extension from the Addison Road Metrorail Station to Largo Town Center, a three mile (4.8 kilometer), two station addition to the region's rail transit system. Options to mitigate adverse impacts and to support local land use will be considered.

V. Probable Effects

The FTA and MTA plan to evaluate in the EIS significant social, economic and environmental impacts of the alternatives under consideration. Among the primary issues are the expected increase in transit ridership, the expected increase in mobility for the corridor's transit dependent, the support of the region's air quality goals, the capital outlays needed to construct the project, the cost of operating and maintaining the facilities created by the project, and the financial impacts on the funding agencies. The environmental and social impacts proposed for analysis include: Land use and economic activity, displacements and relocations, neighborhoods, visual conditions, traffic, air quality, noise and vibration, ecosystems, water resources, hazardous waste disposal/neutralization, parklands, soils/geology/topography, historic, cultural and archaeological resources, and energy impacts. These impacts will be evaluated both for the construction period and for the long-term operation of each alternative.

VI. FTA Procedures

In accordance with federal transportation planning regulations (23 CFR Part 450), the draft EIS will be prepared to include an evaluation of the social, economic and environmental impacts of the alternatives. The DEIS will be performed concurrently with Preliminary Engineering. On the basis of the public and agency comments received on the DEIS, the MTA Administrator in concert with the Secretary of the Maryland Department of Transportation (MDOT) and in consultation with Prince George's County, MWCOG, WMATA, M–NCPPC, and other affected agencies, will select a preferred alternative. Then MTA, as lead agency, will continue with further Preliminary Engineering and preparation of the Final EIS. Opportunity for additional public comment will be provided throughout all phases of project development.

Issued on: February 23, 1996.

Sheldon A. Kinbar,

*Regional Administrator.*

[FR Doc. 96–4691 Filed 2–28–96; 8:45 am]

**BILLING CODE 4910–57–P**

## National Highway Traffic Safety Administration

### Fatal Accident Reporting System Users Meeting

**AGENCY:** National Highway Traffic Safety Administration, DOT.

**ACTION:** Meeting announcement.

**SUMMARY:** This notice announces a public meeting at which NHTSA will conduct a Fatal Accident Reporting System (FARS) Users meeting. The users are those members of the highway safety community that analyze data from the Fatal Accident Reporting System.

**DATES AND TIME:** The meeting is scheduled to begin at 9:30 a.m., on Thursday, March 7, 1996 and conclude at 3:00 p.m., on Thursday, March 7, 1996.

**ADDRESSES:** The meeting will be held in Rooms 6244–48 of the U.S. Department of Transportation Building, which is located at 400 7th Street SW., Washington, DC.

**SUPPLEMENTARY INFORMATION:** NHTSA intends to review the currently collected data elements in FARS and identify new and additional elements that would help support the highway safety community. The attendees will be able to provide information and recommendations to NHTSA on data elements that could be collected in FARS and would support their analytic efforts for the highway safety community.

The meeting is open to the public, but attendance may be limited due to space availability. Participation by the public will be determined by the meeting coordinator.

**FOR FURTHER INFORMATION CONTACT:** Charles J. Venturi, Fatal Accident Reporting System Branch, Chief, National Center for Statistics and Analysis, 400 7th Street SW., Washington, DC 20590, Telephone (202) 366–4709. Internet—Cventuri@NHTSA.DOT.GOV

Issued: February 23, 1996.

William A. Boehly,

*Associate Administrator for Research and Development.*

[FR Doc. 96–4667 Filed 2–28–96; 8:45 am]

**BILLING CODE 4910–59–M**

## Surface Transportation Board [1]

**[Docket No. AB–6 (Sub-No. 370X)]**

### Burlington Northern Railroad Company—Abandonment Exemption—Between Mesa and Basin City, Franklin County, WA

**AGENCY:** Surface Transportation Board.

**ACTION:** Notice of exemption.

**SUMMARY:** The Board exempts from the prior approval requirements of 49 U.S.C. 10903–04 the abandonment by Burlington Northern Railroad Company of its 11.20-mile line located between milepost 0.00, near Mesa, and milepost 11.20, near Basin, in Franklin County, WA. The exemption is subject to environmental, endangered species, and standard employee protective conditions.

[1] The ICC Termination Act of 1995, Pub. L. No. 104–88, 109 Stat. 803 (the Act), which was enacted on December 29, 1995, and took effect on January 1, 1996, abolished the Interstate Commerce Commission (ICC) and transferred certain functions and proceedings to the Surface Transportation Board (Board). Section 204(b)(1) of the Act provides, in general, that proceedings pending before the ICC on the effective date of that legislation shall be decided under the law in effect prior to January 1, 1996, insofar as they involve functions retained by the Act. This notice relates to a proceeding that was pending with the ICC prior to January 1, 1996, and to functions that are subject to Board jurisdiction pursuant to 49 U.S.C. 10903. Therefore, this notice applies the law in effect prior to the Act, and citations are to former sections of the statute, unless otherwise indicated.

**DATES:** Provided no formal expression of intent to file an offer of financial assistance has been received, this exemption will be effective on March 30, 1996. Formal expressions of intent to file an offer [2] of financial assistance under 49 CFR 1152.27(c)(2) must be filed by March 11, 1996, petitions to stay must be filed by March 15, 1996, and petitions to reopen must be filed by March 25, 1996.

**ADDRESSES:** Send pleadings referring to Docket No. AB–6 (Sub-No. 370X) to: (1) Office of the Secretary, Case Control Branch, Surface Transportation Board, 1201 Constitution Avenue, N.W., Washington, DC 20423; and (2) Petitioner's representative, Sarah J. Whitley, 3800 Continental Plaza, 777 Main Street, Fort Worth, TX 76102–5384.

**FOR FURTHER INFORMATION CONTACT:** Beryl Gordon, (202) 927–5312. [TDD for the hearing impaired: (202) 927–5721.]

**SUPPLEMENTARY INFORMATION:** Additional information is contained in the Board's decision. To purchase a copy of the full decision, write to, call, or pick up in person from: DC News & Data, Inc., 1201 Constitution Avenue, N.W., Room 2229, Washington, DC 20423. Telephone: (202) 289–4357/4359. [Assistance for the hearing impaired is available through TDD service (202) 927–5721].

Decided: February 20, 1996.

By the Board, Chairman Morgan, Vice Chairman Simmons, and Commissioner Owen.

Vernon A. Williams,

*Secretary.*

[FR Doc. 96–4668 Filed 2–28–96; 8:45 am]

**BILLING CODE 4915–00–P**

## DEPARTMENT OF THE TREASURY

### Proposed Data Collection Submitted for Public Comment and Recommendations

**AGENCY:** Financial Crimes Enforcement Network, Treasury.

**ACTION:** Notice.

**SUMMARY:** In order to comply with the requirements of the Paperwork Reduction Act of 1995 concerning proposed extensions of information collection requirements, the Financial Crimes Enforcement Network (''FinCEN'') is soliciting comments on the information collected on foreign bank and financial accounts under the Bank Secrecy Act regulations.

[2] *See Exempt. of Rail Abandonment—Offers of Finan. Assist.*, 4 I.C.C.2d 164 (1987).

**DATES:** Submit written comments by April 29, 1996.

**ADDRESSES:** Direct all written comments to the Financial Crimes Enforcement Network, Office of Regulatory Policy and Enforcement, Attn.: FBAR Comments, Suite 200, 2070 Chain Bridge Road, Vienna, VA 22182–2536.

**FOR FURTHER INFORMATION CONTACT:** Charles D. Klingman, Office of Financial Institutions Policy, at (703) 905–3920; or Joseph M. Myers, Attorney-Advisor, Office of the Legal Counsel, at (703) 905–3590.

**SUPPLEMENTARY INFORMATION:**

1. The Bank Secrecy Act, Titles I and II of Pub. L. 91–508, as amended, codified at 12 U.S.C. 1829b, 12 U.S.C. 1951–1959, and 31 U.S.C. 5311–5330, authorizes the Secretary of the Treasury, *inter alia,* to issue regulations requiring records and reports that are determined to have a high degree of usefulness in criminal, tax, and regulatory matters. Regulations implementing Title II of the Bank Secrecy Act (codified at 31 U.S.C. 5311–5330) appear at 31 CFR Part 103.

The Bank Secrecy Act specifically directs the Secretary to ''require a resident or citizen of the United States or a person in, and doing business in, the United States, to keep records, file reports, or keep records and file reports, when the resident, citizen, or person makes a transaction or maintains a relation for any person with a foreign financial agency.'' 31 U.S.C. 5314. The authority of the Secretary to administer the Bank Secrecy Act has been delegated to the Director of FinCEN; the requirement of 31 U.S.C. 5314 has been accomplished through regulations promulgated at 31 CFR 103.24 and through the instructions to the *Report of Foreign Bank and Financial Accounts,* Treasury Form TD F 90–22.1.

2. The mission of FinCEN includes the provision of government-wide, multi-source intelligence and analytical network in support of the detection, investigation, and prosecution of domestic and international money laundering and other financial crimes by federal, state, local and foreign law enforcement agencies. Accordingly, information collected on form TD F 90–22.1 is made available, in accordance with strict safeguards, to appropriate criminal and civil law enforcement personnel in the official performance of their duties. The information contained is of use in investigations involving international money laundering, tax evasion, restrictions on prohibited financial transactions with designated countries, and other financial crimes.

3. In accordance with requirements of the Paperwork Reduction Act of 1995, 44 U.S.C. 3506(c)(2)(A), and its implementing regulations, 5 CFR 1320, the following information concerning the collection of information on form TD F 90–22.1 is presented to assist those persons wishing to comment on the information collection. (The number of respondents has significantly varied each year; the estimates below are based on an average.)

*Description of Respondents:* All United States persons owning or having authority over a foreign bank or financial account with value greater than $10,000 at any time during a single year.

*Frequency:* No more frequently than annually.

*Estimated Number of Respondents:* 150,000.

*Estimate of Burden:* Reporting average of 10 minutes per response; recordkeeping average of 5 minutes per response.

*Estimate of Total Annual Burden on Respondents:* Reporting burden estimate = 25,000 hours; recordkeeping burden estimate = 12,500 hours. Estimated combined total of 37,500 hours.

*Estimate of Total Annual Cost to Respondents for Hour Burdens:* Based on $20 per hour, the total cost to the public is estimated to be $750,000.

*Estimate of Total Other Annual Costs to Respondents:* None.

*Type of Request:* Reinstatement.

*OMB Number:* 1506–0002.

*Form Number:* TD F 90–22.1

4. FinCEN specifically invites comments on the following subjects: (a) Whether the proposed collection of information is necessary for the proper performance of the mission of FinCEN, including whether the information shall have practical utility; (b) the accuracy of FinCEN's estimate of the burden of the proposed collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology.

In addition, the Paperwork Reduction Act of 1995 requires agencies to estimate the total annual cost burden to respondents or recordkeepers resulting from the collection of information. Thus, FinCEN also specifically requests comments to assist with this estimate. In this connection, FinCEN requests commenters to identify any additional costs associated with the completion of the form. These comments on costs should be divided into two parts: (1) Any additional costs associated with

reporting; and (2) any additional costs associated with recordkeeping.

Respondents to this notice will be summarized and included in the request for Office of Management and Budget approval. All comments will become a matter of public record.

Dated: February 25, 1996.

William F. Baity,

*Deputy Director, Financial Crimes Enforcement Network.*

[FR Doc. 96–4645 Filed 2–28–96; 8:45 am]

**BILLING CODE 4820–03–M**

## Internal Revenue Service

### Art Advisory Panel of the Commissioner of Internal Revenue

**AGENCY:** Internal Revenue Service, Treasury.

**ACTION:** Notice of determination of necessity for renewal of the Art Advisory Panel.

**SUMMARY:** It is in the public interest to continue the existence of the Art Advisory Panel.

**FOR FURTHER INFORMATION CONTACT:** Karen Carolan, C:AP:AS, 901 D Street, SW., Room 224, Box 68, Washington, DC 20024, Telephone No. (202) 401–4128, (not a toll free number).

Pursuant to the Federal Advisory Committee Act, 5 U.S.C. App. (1982), the Commissioner of Internal Revenue announces the renewal of the following advisory committee:

*Title.* The Art Advisory Panel of the Commissioner of Internal Revenue.

*Purpose.* The Panel assists the Internal Revenue Service by reviewing and evaluating the acceptability of property appraisals submitted by taxpayers in support of the fair market value claimed on works of art involved in Federal Income, Estate or Gift taxes in accordance with sections 170, 2031, and 2512 of the Internal Revenue Code of 1986.

In order for the Panel to perform this function, Panel records and discussions must include tax return information. Therefore, the Panel meetings will be closed to the public since all portions of the meetings will concern matters that are exempted from disclosure under the provisions of section 552b(c)(3), (4), (6) and (7) of Title 5 of the U.S. Code. This determination, which is in accordance with section 10(d) of the Federal Advisory Committee Act, is necessary to protect the confidentiality of the tax returns and return information as required by section 6103 of the Internal Revenue Code.

*Statement of Public Interest.* It is in the public interest to continue the existence of the Art Advisory Panel. The Secretary of Treasury, with the concurrence of the General Services Administration, has also approved renewal of the Panel. The membership of the Panel is balanced between museum directors and curators, art dealers and auction representatives to afford differing points of view in determining fair market value.

Authority for this Panel will expire two years from the date the Charter is approved by the Assistant Secretary for Management/Chief Financial Officer and filed with the appropriate congressional committees unless, prior to the expiration of its Charter, the Panel is renewed.

The Commissioner of Internal Revenue has determined that this document is not a major rule as defined in Executive Order 12291 and that a regulatory impact analysis therefore is not required. Neither does this document constitute a rule subject to the Regulatory Flexibility Act (5 U.S.C. Chapter 6).

Margaret Milner Richardson,

*Commissioner of Internal Revenue.*

[FR Doc. 96–4699 Filed 2–28–96; 8:45 am]

**BILLING CODE 4830–01–M**

# Sunshine Act Meetings

Federal Register
Vol. 61, No. 41
Thursday, February 29, 1996

This section of the FEDERAL REGISTER contains notices of meetings published under the ''Government in the Sunshine Act'' (Pub. L. 94-409) 5 U.S.C. 552b(e)(3).

## DEFENSE NUCLEAR FACILITIES SAFETY BOARD

Pursuant to the provisions of the ''Government in the Sunshine Act'' (5 U.S.C. § 552b), notice is hereby given of the Board's meeting described below. The Board will also conduct a public hearing pursuant to 42 U.S.C. 2286b to evaluate the readiness of the Department of Energy (DOE) to safely start up and operate the Defense Waste Processing Facility (DWPF) for radioactive sludge operations only.

**TIME AND DATE:** 5:00 p.m., March 11, 1996.

**PLACE:** The Conference Center (Municipal Auditorium), 214 Park Avenue, S.W., Aiken, South Carolina. The entrance to the facility is located at 215 The Alley.

**STATUS:** Open.

**MATTERS TO BE CONSIDERED:** Safety issues related to commencement of radioactive sludge operations at DWPF.

**CONTACT PERSON FOR MORE INFORMATION:** Robert M. Andersen, General Counsel, Defense Nuclear Facilities Safety Board, 625 Indiana Avenue, N.W., Suite 700, Washington, D.C. 20004, (800) 788–4016. This is a toll free number.

**SUPPLEMENTARY INFORMATION:** The meeting agenda is as follows:

5:00–5:10 p.m. Introductory comments by Mr. John T. Conway, Chairman.
5:10–5:30 p.m. Discussion by Dr. Mario Fiori, Manager of DOE Savannah River Operations Office—affirm DOE–SR position on state of readiness of DWPF for sludge-only operations.
5:30–5:50 p.m. Discussion by Mr. Frank McCoy, DOE–SR Assistant Manager for Environment, Safety, Health and Quality Assurance, on the Savannah River Site Integrated Standards-Based Safety Management Program and its application at DWPF.
5:50–6:10 p.m. Discussion by Mr. Austin Scott, Vice President of HLW Operations, WSRC—ability of WSRC to safely startup and operate DWPF for sludge-only operations.
6:10–6:30 p.m. Discussion by Mr. Peter Graeff, WSRC ORR Chairman—WSRC ORR evaluation, conclusions, and perspectives.
6:30–6:50 p.m. Discussion by Mr. Joe King, DOE ORR Chairman—DOE ORR evaluation, conclusions, and perspectives.
6:50–7:10 p.m. Discussion by Mr. Dave Lowe, Board Technical Staff, providing introduction and history of Board involvement and review at DWPF.
7:10–7:30 p.m. Discussion by Mr. Joe Sanders of Board Technical Staff efforts on DWPF and explanation of Safety Authorization Basis review methodology used.
7:30–8:30 p.m. Board Technical Staff panel presentation of significant topical areas and response to Board member questions.
8:30 p.m.—Close Scheduled presentations by interested public.

Requests to speak at the hearing may be submitted in writing or by telephone. We ask that commentators describe the nature and scope of the oral presentation. Those who contact the Board prior to close of business on March 8, 1996, will be scheduled for time slots, beginning at approximately 8:30 p.m. The Board will post a schedule for those speakers who have contacted the Board before the hearing. The posting will be made at the entrance to the Conference Center, at the start of the 5:00 p.m. hearing.

Anyone who wishes to comment, provide technical information or data may do so in writing, either in lieu of, or in addition to making an oral presentation. The Board members may question presenters to the extent deemed appropriate. The Board will hold the record open until March 25, 1996, for the receipt of additional materials.

A transcript of this proceeding will be made available by the Board for inspection by the public at the Defense Nuclear Facilities Safety Board's Washington office and at the Gregg-Graniteville Library, 171 University Parkway, University of South Carolina, Aiken, SC 29801.

The Board reserves its right to further schedule and otherwise regulate the course of the meeting and hearing, to recess, reconvene, postpone or adjourn the meeting, to extend the time for receipt of additional materials, and otherwise exercise its power under the Atomic Energy Act of 1954, as amended.

Dated: February 27, 1996.
John T. Conway,
*Chairman.*
[FR Doc. 96–4825 Filed 2–27–96; 1:02 pm]
**BILLING CODE 3670–01–M**

## FEDERAL ELECTION COMMISSION

**DATE AND TIME:** Tuesday, March 5, 1996 at 10:00 a.m.

**PLACE:** 999 E Street, N.W., Washington, D.C.

**STATUS:** This Meeting Will Be Closed to the Public.

**ITEMS TO BE DISCUSSED:**

Compliance matters pursuant to 2 U.S.C. § 437g.
Audits conducted pursuant to 2 U.S.C. § 437g, § 438(b), and Title 26, U.S.C.
Matters concerning participation in civil actions or proceedings or arbitration
Internal personnel rules and procedures or matters affecting a particular employee

**DATE AND TIME:** Thursday, March 7, 1996 at 10:00 a.m.

**PLACE:** 999 E Street, N.W., Washington, D.C. (Ninth Floor.)

**STATUS:** This Meeting Will Be Open to the Public.

**ITEMS TO BE DISCUSSED:**

Correction and Approval of Minutes
Title 26 Certification Matters
Advisory Opinion 1996–4: James F. Schoener on behalf of Lyndon H. LaRouche, Jr.
Regulations: *MCFL* Effective Date
Legislative Recommendations 1996
Administrative Matters

**PERSON TO CONTACT FOR INFORMATION:** Mr. Ron Harris, Press Officer, Telephone: (202) 219–4155.
Delores Hardy,
*Administrative Assistant.*
[FR Doc. 96–4873 Filed 2–27–96; 3:42 pm]
**BILLING CODE 6715–01–M**

## FEDERAL HOUSING FINANCE BOARD

Announcing an Open Meeting of the Board

**TIME AND DATE:** 10:00 a.m. Thursday, March 7, 1996.

**PLACE:** Board Room, Second Floor, Federal Housing Finance Board, 1777 F Street, N.W., Washington, D.C. 20006.

**STATUS:** The entire meeting will be open to the public.

**MATTERS TO BE CONSIDERED DURING PORTIONS OPEN TO THE PUBLIC:**

• FHLBank of Atlanta Proposal to Certify the North Carolina Housing Finance Agency as a Nonmember Mortgagee.
• First Round 1996 AHP Awards for the FHLBank of Pittsburgh and Indianapolis.
• 1996 AHP Priority for the FHLBank of Topeka.
• FHLBank of Pittsburgh AHP First Time Homebuyer Set-Aside Program.

**CONTACT PERSON FOR MORE INFORMATION:** Elaine L. Baker, Secretary to the Board, (202) 408–2837.

Rita I. Fair,

*Managing Director.*

[FR Doc. 96–4874 Filed 2–27–96; 3:43 pm]

**BILLING CODE 6725–01–P**

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**BOARD OF GOVERNORS OF THE FEDERAL RESERVE SYSTEM**

**''FEDERAL REGISTER'' CITATION OF PREVIOUS ANNOUNCEMENT:** Forwarded to the Federal Register on Friday, February 23, 1996.

**PREVIOUSLY ANNOUNCED TIME AND DATE OF THE MEETING:** 9:30 a.m., Friday, March 1, 1996.

**CHANGES IN THE MEETING:** Addition of the following closed item(s) to the meeting:

Board administrative matter.

**CONTACT PERSON FOR MORE INFORMATION:** Mr. Joseph R. Coyne, Assistant to the Board; (202) 452–3204.

Dated: February 27, 1996.

Jennifer J. Johnson,

*Deputy Secretary of the Board.*

[FR Doc. 96–4792 Filed 2–27–96; 10:54 am]

**BILLING CODE 6210–01–P**

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**SECURITIES AND EXCHANGE COMMISSION**

Agency Meeting

Notice is hereby given, pursuant to the provisions of the Government in the Sunshine Act, Pub. L. 94–409, that the Securities and Exchange Commission will hold the following open meeting during the week of March 4, 1996.

An open meeting will be held on Tuesday, March 5, 1996, at 10:00 a.m., in Room 1C30.

The subject matter of the open meeting scheduled for Tuesday, March 5, 1996, at 10:00 a.m., will be:

The Commission will consider releasing the staff report of the Task Force on Disclosure Simplification. This report will contain a number of recommendations designed to simplify, streamline, and modernize the rules and forms addressing corporation finance. The Task Force, composed of Commission staff members, was assisted by Philip K. Howard. The Commission also will consider a recommendation to publish a release proposing for comment the elimination of a number of rules and forms, as well as other rule amendments, to begin the implementation of Task Force recommendations. For further information, contact Brian J. Lane, at (202) 942–2800.

At times, changes in Commission priorities require alterations in the scheduling of meeting items. For further information and to ascertain what, if any, matters have been added, deleted or postponed, please contact: The Office of the Secretary at (202) 942–7070.

Dated: February 27, 1996.

Jonathan G. Katz,

*Secretary.*

[FR Doc. 96–4879 Filed 2–27–96; 3:57 pm]

**BILLING CODE 8010–01–M**

# Corrections

Federal Register
Vol. 61, No. 41
Thursday, February 29, 1996

This section of the FEDERAL REGISTER contains editorial corrections of previously published Presidential, Rule, Proposed Rule, and Notice documents. These corrections are prepared by the Office of the Federal Register. Agency prepared corrections are issued as signed documents and appear in the appropriate document categories elsewhere in the issue.

## DEPARTMENT OF TRANSPORTATION

## Federal Aviation Administration

## 14 CFR Part 71

**[Airspace Docket No. 95-ANM-16]**

### Amendment of Class E Airspace; Ogden, UT

*Correction*

In rule document 96–850 beginning on page 1706 in the issue of Tuesday, January 23, 1996, make the following corrections:

**§ 71.1 [Corrected]**

1. On page 1707, in the 1st column, in § 71.1:

a. In the 14th line, ''142-464'' should read ''142-465''.

b. In the 29th line, ''8.500'' should read ''8,500''.

In the correction published in the issue of Friday, February 23, 1996, on page 7051, in the second column, correction 2 is corrected to read as follows:

2. Lines 32 and 33 should read ''101, southeast along V-101 to V-288, west along V-288 to V-484,''.

BILLING CODE 1505–01–D

## DEPARTMENT OF TRANSPORTATION

## Federal Aviation Administration

## 14 CFR Part 91

**[Docket No. 28420 Special Federal Aviation Regulation (SFAR) No. 74]**

**RIN 2120-AGO2**

### Airspace and Flight Operations Requirements for the 1996 Summer Olympic Games, Atlanta, GA

*Correction*

In rule document 96–2988 beginning on page 5492 in the issue of Monday, February 12, 1996 make the following corrections:

(1) On page 5493, in the second column, in the paragraph under Exceptions, in the third line ''tariff'' should read ''traffic''.

(2) On page 5498, in the third column, under ''12. U.S. Highway 64; Tennessee'' in the fifth line ''84°28′37″ W.'' should read ''84°27′37″ W.''.

BILLING CODE 1505–01–D

Federal Register

Thursday
February 29, 1996

## Part II

# Environmental Protection Agency

**40 CFR Part 82**

**Protection of Stratospheric Ozone: Supplemental Rule Regarding a Recycling Standard Under Section 608 (Proposed) of the Clean Air Act; Proposed Rule**

## ENVIRONMENTAL PROTECTION AGENCY

### 40 CFR Part 82

**[FRL–5428–1]**

**RIN 2060–AF36**

## Protection of Stratospheric Ozone: Supplemental Rule Regarding a Recycling Standard Under Section 608 (Proposed) of the Clean Air Act

**AGENCY:** Environmental Protection Agency (EPA).

**ACTION:** Proposed rule.

**SUMMARY:** Through this action EPA is proposing to amend the Refrigerant Recycling Regulations promulgated under section 608 of the Clean Air Act Amendments of 1990. This proposal is being undertaken to provide more flexibility where refrigerants are transferred between appliances with different ownership; to adopt a third-party certification program for reclaimers and laboratories; to propose amendments to the recordkeeping aspects of the technician certification program; and to clarify aspects of the sales restriction. In addition, EPA is proposing changes for the testing of recovery/recycling equipment; and proposes to adopt changes to ARI Standard 740, an industry standard previously adopted by EPA. Also, this action clarifies the distinction between major and minor repairs. In most instances, this action proposes to provide greater flexibility to technicians servicing equipment and it streamlines several existing provisions without compromising the goals of protecting public health and the environment or compliance with the requirements of the Clean Air Act Amendments.

**DATES:** Comments on this proposal must be received by April 1, 1996 at the address below. A public hearing, *if requested*, will be held in Washington, DC. If such a hearing is requested, it will be held on March 18, 1996 at 9 am, and the comment period would then be extended to April 17, 1996. Anyone who wishes to request a hearing should call Cindy Newberg at 202/233–9729 by March 7, 1996. Interested persons may contact the Stratospheric Protection Hotline at 1–800–296–1996 to learn if a hearing will be held and to obtain the date and location of any hearing. Any hearing will be strictly limited to the subject matter of this proposal, the scope of which is discussed below.

**ADDRESSES:** Comments on this proposal must be submitted to the Air Docket Office, Public Docket No. A–92–01 VIII.I, Waterside Mall (Ground Floor) Environmental Protection Agency, 401 M Street, SW., Washington, DC 20460 in room M–1500. Additional comments and materials supporting this rulemaking are contained in Public Docket No. A–92–01. Dockets may be inspected from 8 a.m. until 5:30 p.m., Monday through Friday. A reasonable fee may be charged for copying docket materials. The public hearing will be held at the EPA Auditorium, 401 M Street, SW., Washington, DC.

**FOR FURTHER INFORMATION CONTACT:** Cindy Newberg, Program Implementation Branch, Stratospheric Protection Division, Office of Atmospheric Programs, Office of Air and Radiation (6205–J), 401 M Street, SW., Washington, DC 20460, (202) 233–9729. The Stratospheric Ozone Information Hotline at 1–800–296–1996 can also be contacted for further information.

**SUPPLEMENTARY INFORMATION:** The contents of this preamble are listed in the following outline:

I. Refrigerant Recycling Regulations

II. Proposed Revisions to the Refrigerant Recycling Regulations

A. Contractor reclamation
B. Laboratory certification
  1. Requirements For Laboratory Certification Programs
  2. Requirements for laboratories
C. Revocation and Suspension
D. Adoption of third party approval of reclaimers
E. Technician Certification and the Sales Restriction
  1. Recordkeeping
  2. Technicians certified to work on motor vehicle air conditioners
  3. Transfers between wholly-owned subsidiaries
F. Motor Vehicle Air Conditioner-like appliances
G. Changes to the ARI 740 Test Procedure for Refrigerant Recycling and Recovery Equipment
  1. Measurement of Vapor Recovery Rates
  2. High-Temperature Testing
  3. Use of Representative Recovery Cylinders
  4. Limiting Emissions from Condenser Clearing, Oil Draining, Purging, and External Hoses
  5. Requirements for Equipment Advertised as ''Recycling Equipment''
  6. Durability Testing
H. Major and Minor Repairs
  1. Comments received since the final rule
  2. Proposed definitions

I. Change in the Definition of Small Appliance

1. Background
  2. Additional Comments
  3. Today's proposal

III. Summary of Supporting Analysis

A. Executive Order 12866
B. Regulatory Flexibility Act
C. Paperwork Reduction Act
D. Regulatory Flexibility Act

## I. Refrigerant Recycling Regulations

Final regulations promulgated by the U.S. Environmental Protection Agency (EPA) under section 608 of the Clean Air Act Amendments of 1990 (the Act), published on May 14, 1993 (58 FR 28660), establish a recycling program for ozone-depleting refrigerants recovered during the servicing and disposal of air-conditioning and refrigeration equipment. Together with the prohibition on venting during the maintenance, service, repair, and disposal of class I and class II substances (see the listing notice January 22, 1991; 56 FR 2420) that took effect on July 1, 1992, these regulations are intended to substantially reduce the emissions of ozone-depleting refrigerants. These regulations were subsequently revised in the final regulations published on August 19, 1994 (59 FR 42950), November 9, 1994 (59 FR 55912), March 17, 1995 (60 FR 14607) and August 8, 1995 (60 FR 40419).

The current regulations require that persons servicing air-conditioning and refrigeration equipment observe certain service practices to reduce emissions, establish equipment and reclamation certification requirements, and comply with a technician certification requirement. The regulations also require that ozone-depleting compounds contained in appliances be removed prior to disposal of the appliances, and that all air-conditioning and refrigeration equipment, except for small appliances, be provided with a servicing aperture that will facilitate recovery of refrigerant. In addition, the regulations restrict the sale of refrigerant and establish a leak repair requirement for appliances that normally hold a refrigerant charge of more than fifty pounds. Also, the current regulations require that refrigerant recovered from an appliance but not returned to that appliance or another appliance with the same ownership, must be reclaimed by an EPA certified reclaimer. This last provision is scheduled to sunset in March 1996. Today EPA is issuing a direct final rulemaking and a corresponding proposal to extend the effectiveness of these requirements until December 31, 1996 or until EPA completes this rulemaking, whichever occurs first. EPA suggests that the reader review those notices as well.

II. Proposed Revisions to the Refrigerant Recycling Regulations

*A. Contractor Reclamation*

In this action EPA is proposing to revise the requirements to have refrigerant reclaimed by a certified reclaimer where the level of purity can be ensured through the testing of representative samples. EPA currently prohibits the sale or offer for sale for use as a refrigerant any class I or class II substance consisting wholly or in part of used refrigerant, unless the refrigerant has been reclaimed by a person who has been certified as a reclaimer pursuant to § 82.164. Thus, where refrigerant is moved between appliances with different owners, the refrigerant must be reclaimed by a certified reclaimer. The only exceptions to this current prohibition, such as where refrigerant is transferred between motor vehicle air conditioners (MVACs) that have different ownership, is indicated in § 82.154(g) and (h).

The definition of reclaim promulgated on August 19, 1994 (59 FR 42956), is as follows:

> [To] reclaim refrigerant means to reprocess refrigerant to at least the purity specified in appendix A to 40 CFR part 82, subpart F (based on ARI Standard 700–1993, Specifications for Fluorocarbon and Other Refrigerants) and to verify this purity using the analytical methodology prescribed in appendix A. In general, reclamation involves the use of processes or procedures available only at a reprocessing or manufacturing facility.

EPA promulgated this reclamation requirement to address concerns with the quality of refrigerants, the potential for inadvertent mixing of refrigerants, and the potential costs to the owners of appliances damaged by the use of used refrigerants that do not meet any purity standard. A purity standard helps protect consumers who lack the technical knowledge to evaluate the risks of using refrigerant obtained from an outside source that may be excessively contaminated. EPA stated that ''limited off-site recycling that is supported by a standard of purity and a testing method for recycled refrigerant may be the most cost-effective means of carrying out Section 608 while protecting air-conditioning and refrigeration equipment'' (May 14, 1993,(58 FR 28679)). To protect consumers, EPA permitted off-site recycling only when the ownership of the refrigerant did not change. In instances where ownership of the refrigerant did change, EPA required reprocessing by a certified reclaimer and chemical analysis to ensure conformance with ARI Standard 700. However, the Agency noted that it would conduct a further rulemaking to address whether a standard for used refrigerant could be developed that would protect air-conditioning and refrigeration equipment, but would permit technicians to clean refrigerant themselves by recycling, rather than sending the refrigerant to a reclaimer.

Since the implementation of these regulations, EPA believes that there is consensus concerning the need to continue to depend on ARI Standard 700 as the appropriate standard for purity of used refrigerants. Therefore, EPA considered extending the current reclamation requirement indefinitely. EPA strongly believes this requirement has provided an effective means for ensuring refrigerant purity and, therefore, protecting consumers. However, the industry standard that is the basis for today's proposal maintains the important aspects of the current requirement while providing greater flexibility. Where an alternative to sending the entire refrigerant charge to a certified reclaimer is advocated, a protocol for analyzing the refrigerant has been maintained. Since chemical analysis is the crux of the reclamation program EPA believes it is possible to provide this flexibility while maintaining an effective program. As stated above, the Agency's goal has been to develop a more flexible procedure that would ensure compliance with the standard without disrupting the marketplace.

While EPA has required that refrigerant transferred between different owners be reclaimed, EPA has encouraged the development of a procedure for ensuring the purity of used refrigerants. This procedure is referred to as ''off-site recycling.'' Since May 1993, EPA has monitored the industry's development of new standards. EPA has participated and observed several industry forums and has met with various stakeholders. As development of a potential standard for off-site recycling progressed, it became apparent that such a standard could not be developed by industry and adopted by EPA prior to the expiration of the promulgated reclamation requirement on May 14, 1995. Therefore, EPA extended the reclamation requirement until March 17, 1996 (60 FR 14607) and more recently published an action to further extend the effectiveness of these requirements. These actions ensured that a purity standard remained in effect during consideration of the newly developed industry standard discussed below. If EPA adopts the standard proposed today, EPA will simultaneously sunset the current reclamation requirement.

''Handling and Reuse of Refrigerants in the United States,'' commonly known as Industry Recycling Guide (IRG–2), was published in December 1994. IRG–2 was developed and endorsed by the following organizations:

—Air-Conditioning and Refrigeration Institute (ARI);
—Air Conditioning Contractors of America (ACCA);
—Association of Home Appliance Manufacturers (AHAM);
—Food Marketing Institute (FMI);
—Mechanical Service Contractors of America (MSCA);
—Mechanical Contractors Association of America (MCAA);
—National Association of Plumbing-Heating-Cooling Contractors (NAPHCC);
—Refrigeration Service Engineers Society (RSES);
—Sheet Metal and Air-Conditioning Contractors National—Association, Inc. (SMACNA);
—Spauschus Association, Inc.; and

developed in cooperation with the General Services Administration of the U.S. Government.

This group represents refrigerant reclaimers, manufacturers of air-conditioning and refrigeration equipment, manufacturers of recovery and recycling equipment, compressor manufacturers, contractors, engineers, food stores, building owners and managers, and the federal government.

IRG–2 provides guidelines for determining how to handle refrigerant that has been recovered from an air-conditioning or refrigeration appliance. IRG–2 describes four potential options:

(1) Putting the refrigerant back into the system without recycling it;

(2) Recycling the refrigerant and putting it back into the system from which it was removed or back into a system with the same owner;

(3) Recycling the refrigerant, testing to verify conformance with ARI Standard 700 prior to reuse in a different owner's equipment, provided that the refrigerant remains in the contractor's custody and control at all times from recovery through recycling to reuse; and

(4) Sending the refrigerant to a certified reclaimer.

The current regulations allows options 1, 2, and 4. Through this action, EPA is proposing also to permit option 3.

While not part of today's proposal, EPA notes that a technician should consider many factors when servicing an appliance and deciding how to handle the refrigerant that has been recovered. Technicians should consider

why the system is being serviced. Compressor failures, particularly motor burnouts, will affect the service person's decision concerning how to clean the refrigerant. The service history and age of the appliance can be important. Appliances that have not been cleaned or evacuated properly from a previous service problem may have higher levels of contamination in the refrigerant and in the oil. If the service history is unavailable the technician may, at a minimum, wish to recycle the refrigerant. If the appliance had a previous burnout, the technician should be concerned with the purity of the refrigerant. Technicians should consider the equipment manufacturer's policies and recommendations concerning the use of recycled refrigerant. Finally, the technician should consider the cleaning capacity of the recycling equipment.

If the refrigerant needs to be recycled it should be cleaned to acceptable contaminant levels. Equipment certified to meet ARI Standard 740, ''Performance of Refrigerant Recovery/Recycling Equipment,'' should be able to clean refrigerants, although it should be noted ARI Standard 740–1993 does not specify minimum contaminant levels and equipment designed for recycling cannot separate mixed refrigerants. Technicians may need to consider the cleaning capabilities of their recycling equipment over time to ensure that its cleaning performance has not significantly diminished. In addition, filter systems in recycling equipment need to be changed or cleaned regularly to ensure maximum performance.

These factors are part of the complex decisionmaking system the technicians use when determining the appropriate actions for safe refrigerant management. If EPA adopts today's proposed contractor reclamation standard, in many cases the technicians may still choose to recover and have the refrigerant reclaimed by a certified reclaimer.

EPA would like to clarify that what has formerly been referred to as an ''off-site recycling standard'' is essentially reclamation by the technician or contractor, instead of reclamation by the certified reclaimer. EPA and industry have distinguished between recycling and reclamation. To recycle refrigerant means to extract refrigerant from an appliance and to clean the refrigerant for reuse without meeting the requirements for reclamation. Recycled refrigerant is cleaned using oil separation and one or more passes through recycling devices. Recycling procedures are usually performed at the job site. As discussed above, reclamation means that the refrigerant has been cleaned and chemically analyzed for conformity with the ARI Standard 700–1993 purity levels. EPA believes the pertinent part of the definition of reclamation is conformance with the ARI Standard 700–1993 purity levels. Hence, refrigerant that has been cycled through recycling equipment and tested to ensure that ARI Standard 700–1993 has been achieved is actually reclaimed refrigerant. Therefore, henceforth in this notice, EPA will refer to this procedure as contractor reclamation, or contractor reclaiming rather than off-site recycling. Accordingly, EPA is proposing to revise the definition of reclamation to eliminate references to the physical location where reclamation can occur.

EPA is proposing that when the refrigerant remains in the custody of a single technician or contractor and a representative sample of that refrigerant has been chemically analyzed to determine conformance with the ARI Standard 700–1993, the refrigerant will be considered reclaimed and may be charged into a new owner's appliance. A representative sample may be defined as a sample taken from each container of refrigerant to be chemically analyzed and tested to ARI Standard 700–1993 prior to packaging for resale or reuse. Such samples will be at least 500 ml and shipped in stainless steel test cylinders that include ¼″ valve assembly and pressure relief rupture disc. Cylinders should be rated by the Department of Transportation. EPA believes that as long as representative samples of the refrigerant are chemically analyzed by certified laboratories to meet the contaminant levels in ARI Standard 700–1993, and as long as refrigerant remains in the contractor's custody and control, the quality and purity of the reclaimed refrigerant can be ensured.

EPA believes it is essential that the contractor-reclaimed refrigerant remain in the custody and control of the contractor prior to resale. EPA believes that the contractors and technicians understand the importance of maintaining refrigerant purity, particularly in light of the phaseout of ozone-depleting substances. EPA's technician certification program, other relevant educational venues, and work experience, provides contractors and technicians with a level expertise in their chosen endeavor. Their training has made the contractors and technicians aware of the need to avoid releases and refrigerant contamination as well as the dangers that could result from such actions. These factors lead EPA to believe that contractors and technicians can protect the integrity of refrigerant in their charge. There is no practical method for tracking and verifying the purity of refrigerant charges where the custody and control of the refrigerant charges have not been maintained. EPA believes it is necessary to ensure that such mechanisms exist because of the need to ultimately ensure the protection of the equipment that will be charged with the refrigerant. Through this action, EPA is proposing that the contractor or technician maintain records consisting of the date and location of where the refrigerant was recovered, the date(s) and location(s) of where the refrigerant is stored, the date(s) and location(s) of where representative samples are drawn, and the date(s) and location(s) of where the refrigerant is sold after a certified laboratory has verified the quality of the refrigerant. EPA believes this recordkeeping is necessary to ensure that only suitable refrigerant is charged into equipment with different ownership.

Under this proposal, each representative sample of the refrigerant must be chemically analyzed for conformity with ARI Standard 700–1993 by a laboratory that participates in an EPA-approved laboratory certification program. The requirements for laboratory certification are discussed in a later section of today's notice. If the laboratory report shows that the representative sample meets ARI Standard 700–1993 purity levels, then the refrigerant would be considered reclaimed and can be charged into a different owner's appliance.

EPA believes that this contractor reclamation option creates flexibility for the contractors and technicians while continuing to protect the owners or operators of the affected appliances and to meet the statutory requirements of the Clean Air Act Amendments. EPA believes that permitting contractor reclamation of refrigerants will provide savings to the contractors that may be passed on to the appliance owners. Shipping refrigerants to certified reclaimers often may constitute a large capital outlay for the contractor, whereas shipping only representative samples to laboratories may limit the expenses for the contractors. EPA also believes that this flexibility will not compromise compliance with the requirements of the Clean Air Act Amendments. Section 608(a) of the Clean Air Act Amendments requires that regulations include requirements that (A) reduce the use and emission of such substances to the lowest achievable level, and (B) maximize the recapture and recycling of such

substances. EPA believes that as long as the chain of custody and control of the refrigerant is not compromised, as discussed in IRG–2, and the purity of the refrigerant is chemically analyzed to ensure conformance with ARI Standard 700–1993, the purity of the refrigerant can be assured. In addition, this added flexibility will not increase emissions or lessen the recapture of ozone-depleting refrigerants. Technicians already recover these refrigerants and, where ownership of the refrigerant will change, the technicians already transfer the refrigerants to certified reclaimers. In accordance with the proposed contractor reclamation option, technicians would still recover the refrigerant. The only significant change is the ability to submit a representative sample for testing rather than shipping the entire refrigerant charge. Since the same required practices for handling refrigerants apply in both cases there is no additional risk of release of refrigerant stemming from this proposed change in the regulations.

EPA believes this approach provides economic benefits for the contractors and the appliance owners while maintaining the integrity of the refrigerant supply.

EPA believes that refrigerant will continue to be reclaimed properly even where someone other than a certified reclaimer is responsible for the refrigerant. EPA requests comment regarding contractor reclamation.

EPA also requests comments on the definition of a representative sample. EPA believes a more detailed definition is not necessary. A sample for chemical analysis is only as good as the method used to extract that sample. If samples that are not truly representational of the refrigerant charge are used for analysis, the results could be inaccurate. However, EPA understands that there are trade organizations, such as ARI, that can provide guidance on the correct procedures for sampling refrigerant. EPA also understands that laboratories can provide information to technicians concerning these methods for sampling and may not accept samples that have not been correctly extracted. Therefore, EPA does not believe it is necessary for the Agency to include such information in a definition.

EPA is also interested in how much savings the adoption of contractor reclamation may represent for contractors and technicians. EPA believes that shipping samples rather than the entire refrigerant charge should lessen costs. There may be other economic benefits derived from the adoption of contractor reclamation as well. EPA is interested in both anecdotal and analytical information concerning the reduction of costs.

*B. Laboratory Certification*

The proposed adoption of contractor reclamation is directly linked to a means of ensuring that laboratories analyzing representative samples of the refrigerant charges are qualified to perform such services. Therefore, EPA believes it is appropriate to ensure that a means of oversight for the laboratories exists. Through this action, EPA will propose the adoption of a third-party certification program for laboratories. EPA is aware of a voluntary program developed by ARI to certify laboratories. Key elements of the program include qualifying tests, ongoing testing, and site visits. EPA believes that many of these elements are consistent with the elements that EPA is proposing for any person seeking to become a third-party laboratory certifier.

EPA considered other alternatives to third-party certification, including a direct certification program. However, the agency believes a third-party program would be more appropriate because industry organizations have the expertise and resources to establish and maintain an effective program. Moreover, EPA has learned from experience with other certification programs administered under subpart F that third-party certification can be highly effective, particularly where the third-party has already operated similar voluntary programs that can be used to help fine-tune the administration of a required certification program.

A third-party certification program would require EPA approval of the certifying programs and the development of standards for both the certifying programs and standards for the laboratories. This approach is similar to the several other certification programs successfully administered under the section 608 program.

1. Requirements for Laboratory Certification Programs

EPA believes that a laboratory certification program should develop a set of minimum performance requirements for initial and continuing certification. EPA has reviewed a draft program to be established by ARI. Many of the key elements included in this notice of proposed rulemaking (NPRM) are analogous to ARI's draft requirements.

EPA believes a signed agreement between the laboratory and the laboratory certification program will be necessary to ensure an understanding of the responsibilities of both the laboratory and the certifying program. Such an agreement should include information concerning a laboratory's ability to test representative samples of refrigerant to the purity levels acceptable under the ARI Standard 700–1993 standard and a willingness to comply with the standards established by the EPA-approved laboratory certification program.

To become certified, EPA believes that a laboratory applying for certification should test and verify the composition of at least three refrigerants submitted by the EPA-approved laboratory program. Only laboratories that accurately determine, within an acceptable range, each contaminant in any of the qualifying samples should be certified. EPA believes the following list of values constitute acceptable ranges for reporting contaminants:

Purity: +/− 0.10%;
Water: +/− the greater of 3ppm or 10% of the actual value;
High Boiling Residue: +/− the greater of 0.01% (absolute) or 20% of the actual value; and
Non-condensibles: +/− the greater of 0.2% (absolute) or 10% of the actual value.

These values were developed by ARI and reviewed by EPA staff. EPA has determined that these values should ensure that a laboratory is able to provide accurate results within an acceptable range.

The laboratory certification program should perform a site visit prior to certifying the laboratory to ensure that the laboratory is capable of performing correct refrigerant analysis and performed its own analysis of the samples submitted for verification. Site visits should include a visual inspection of the laboratory's equipment and ascertain whether each item necessary for routine refrigerant analysis is present and is functional. In addition, the site visit should include a procedural review of the laboratory's methods and procedures for refrigerant analysis. EPA anticipates that a schedule of continued site visits will be necessary to ensure the continued qualifications of the laboratory. EPA believes these visits should occur on at least a semiannual basis.

To provide contractors and technicians with information concerning the status of the laboratory, EPA believes it is necessary for the laboratory certification program to provide the laboratory with evidence that the laboratory is certified. EPA is proposing to require that this evidence be displayed conspicuously; therefore, EPA anticipates that a seal or logo will be necessary. In addition, EPA believes

that the seal or logo should contain standardized language. EPA is proposing that the seal or logo include the following statement: ''_____ has been certified as a laboratory to analyze refrigerant, as required by 40 CFR part 82, subpart F.'' This evidence demonstrates to those unfamiliar with the status of every laboratory, that a particular facility is properly certified. The requirement to display evidence is consistent with the requirements for other third-party certification programs promulgated under subpart F. This notification could be particularly important if a technician or contractor is aware of which laboratory certification programs are approved by EPA, but does not have a list of every laboratory that has been certified. EPA anticipates that there will be a limited number of laboratory certification programs; however, the potential list of laboratories certified to test and verify refrigerant samples could be extensive.

Laboratories that are unable to substantiate their ability to comply with the criteria established through this rulemaking, or with any relevant additional criteria established by the EPA-approved laboratory certifier, should be disqualified from the review process. The laboratory should be permitted to reapply at a later date. A certified laboratory no longer able to meet the continuing criteria should be decertified. EPA believes that laboratories that misrepresent their status, do not comply with the payment of any reasonable fees to the certifying program, and laboratories that do not submit required data, are examples of laboratories that should be disqualified. If a laboratory is decertified, the laboratory certification program should inform EPA within 30 days.

Laboratory certification programs that cannot or do not decertify laboratories that do not comply with the standards set forth in this proposal could have their EPA approval revoked. If such a case arises, laboratories certified by that laboratory certification program would be required to be certified by another approved program within 6 months.

EPA proposes to approve laboratory certification programs that demonstrate to EPA their ability to establish and maintain a program that includes the elements discussed in this proposal and that provide the necessary level of continued oversight for the certified laboratories. At a minimum, those seeking EPA-approval for a laboratory certification program would need to submit information to EPA demonstrating the program's ability to meet the criteria established by this proposal. Furthermore, EPA anticipates that there may be a need for a site visit by EPA to the potential laboratory certification program to ensure the ability of the potential program to perform verification of representative samples. If the laboratory certification program uses an independent laboratory to analyze samples, information concerning that laboratory and/or inspection of that laboratory may be necessary.

2. Requirements for Laboratories

Through this action, EPA is proposing a process for third-party certification of laboratories that would analyze samples of refrigerant submitted by contractors in accordance with the proposed scheme for contractor reclamation. Those seeking to become laboratory certification programs would submit information demonstrating their ability to meet the requirements specified in this proposal.

EPA requests comments on the proposed certification of laboratories. EPA particularly is interested in comments concerning the criteria for the laboratories that would be certified under this proposed scheme. EPA has not set forth a protocol for handling representative samples in this NPRM. EPA is interested in whether it is necessary to require a protocol, and if so, what such a protocol should encompass. In addition, EPA requests comments on the requirement that laboratory certification programs receive and maintain EPA approval. EPA is also interested in comments concerning decertification and revocation.

*C. Revocation and Suspension*

Failure to abide by any of the provisions of Subpart F may result in the revocation or suspension of the approval of the laboratory certification program. In addition, EPA is proposing that these same procedures be applicable to other third-party certification programs promulgated under Subpart F. Those certification programs include: technician certification, equipment certification, recovery and recycling equipment certification and reclaimer certification as discussed later in this notice. In such cases, EPA will notify the certification program in writing. Today's action specifies the proposed procedures for suspension and revocation as well as providing information concerning the ability of an approved certification program to challenge a decision of revocation or suspension. In such cases the program may request a hearing within 30 days; however, the program must submit in writing the program's objections and supporting data. If, after review of the request the Agency agrees that the program raises a substantial and factual issue the Agency would provide a hearing and assign a Presiding Officer. The Agency may direct that all arguments and presentation of evidence be concluded within a specified time of no less than 30 days from the date that the first written offer of a hearing was made and may direct that the decision of the Presiding Officer will be final. EPA is proposing that the decision of the Presiding Officer will be final without further proceedings, unless there is an appeal or motion for review by the Administrator within 20 days of the decision. On appeal, EPA is proposing to provide the Administrator with all the powers that he or she would have in making the initial decision, including the discretion to require or permit briefs, oral arguments, the taking of additional evidence, or the remanding to the Presiding Officer for additional proceedings. EPA requests comments on these proposed procedures.

*D. Adoption of Third Party Approval of Reclaimers*

In order to ensure the quality of reclaimed refrigerant on the market, EPA requires the certification of reclaimers. Currently, reclaimers certify to EPA that they return refrigerant to at least the ARI Standard 700–1993, verify the purity using the methods set forth in ARI Standard 700–1993, and dispose of wastes from the reclamation process in accordance with applicable laws and regulations. During initial rulemaking under section 608, EPA considered an option whereby EPA would approve third parties that would certify reclaimers, and could administer site inspections and/or sampling of refrigerant. EPA stated that a third-party certification would be more reliable than self-certification. Inspections and sampling would provide independent evidence that the ARI Standard 700–1993 was being achieved at the reclamation facility. At the time the rule was drafted, one party demonstrated interest in seeking approval to be a third-party certifier. EPA indicated in the preamble discussion (58 FR 28699) that at a future date, it may consider replacing the self-certification program with third-party certification.

Through this notice, EPA is proposing to take such action. EPA believes that ARI and perhaps other industry entities will be interested in applying to become an EPA laboratory certification program. These organizations could provide site inspections and test refrigerant samples. EPA understands that to ensure compliance with a voluntary program

currently administered by ARI, ARI audits refrigerant to verify the ability of the ARI-certified reclaimers to comply with the program's criteria. EPA believes this type of oversight provides a stronger mechanism for ensuring the purity of refrigerants than the self-certification program currently administered by EPA.

EPA believes that since its inception, ARI's voluntary program has been highly successful. The program ensures the quality of the refrigerant, thus protecting the appliances and the consumer. Therefore, EPA believes it is appropriate to replace its self-certification program with a third-party certification that includes certain aspects of the ARI program.

EPA believes reclamation certification programs should perform oversight and refrigerant analysis to ensure conformance. In addition, programs would be required to process and maintain reports concerning the amount of reclaimed refrigerant that each certified reclaimer processes. The reclamation certification program would be required to verify the information reported by the reclaimers. Verification could be part of the inspection and testing process. Aggregate annual reporting to EPA would be required.

At a minimum the reclamation certification program would be required to ensure that at least four samples of reclaimed refrigerant from each certified reclaimer's facilities are tested by a laboratory and verified by the program each year. The particular samples to be tested are to be selected from an inventory of refrigerant that has been reclaimed by the reclaimer. If the reclaimer processes many types of refrigerants, each refrigerant listed by the reclaimer should be tested at least once a year. These tests must be performed on a random basis. Certified reclaimers should be required to display a logo, seal, or other like notification, indicating which EPA-approved reclamation certification program has certified the reclaimer. This notification ensures that the refrigerant purchaser is suitably informed about the certified reclaimer's affiliations. EPA believes that the seal or logo should contain standardized language. EPA is proposing that the seal or logo include the following statement: ''_____ has been certified as a refrigerant reclaimer, as required by 40 CFR part 82, subpart F.'' This seal or logo should be displayed in a manner that permits a technician or contractor to know that the reclaimer is certified by an EPA-approved program. This information could be particularly important if a person knows the names of all EPA-approved reclamation certification programs but does not know the names of all the certified reclaimers. EPA anticipates that there will be a limited number of approved reclamation certification programs; however, the potential list of certified reclaimers is far more extensive.

Reclaimers that are unable to substantiate their ability to comply with the criteria established through this rulemaking, or with other relevant state, local or federal requirements, should not be certified. In addition, a certified reclaimer no longer able to meet the continuing criteria should be decertified. For example, reclaimers that submit incomplete or inaccurate reports, refuse to permit site inspections, or fail to perform sufficient refrigerant analysis should be decertified. The reclaimer should be permitted to reapply at a later date. The reclaimer certification program would be required to inform EPA that a reclaimer has been decertified within 30 days.

Reclamation certification programs that cannot or do not decertify reclaimers that do not comply with the standards set forth in this proposal, or do not comply with other provisions, could have their EPA approval revoked. If such a case arises, reclaimers certified by the certifying program would be required to be certified by another approved program within six months. Such a requirement is necessary to ensure that the reclaimer continues to be certified by an EPA-approved program, not a program that has had its approval revoked. Moreover, such a requirement is necessary because if EPA has taken action to revoke approval, such action may be based on improper certification procedures used by the program. As discussed above, EPA is proposing specific procedures for suspension and revocation, as well as providing information concerning the ability of a reclaimer certification program to challenge a decision of revocation or suspension. These procedures would be the same for all third-party certification programs established under Subpart F.

EPA is concerned with transferring one aspect of its current reclaimer certification program to third parties. Certified reclaimers currently certify to EPA compliance with requirements for waste disposal. EPA is not convinced that approved reclamation certification programs would be capable of ensuring full compliance with federal, state, or local requirements outside of those promulgated under section 608, such as hazardous waste disposal. However, it is necessary that any potentially certified reclaimer either indicate to EPA or to an approved reclamation certification program that such compliance is occurring. Therefore, EPA is proposing that the reclaimers certify that they dispose of wastes from the reclamation process in accordance with applicable laws and regulations. However, if the certification program suspects that these laws and regulations are not being met, such information would be forwarded to EPA for further investigation.

EPA believes that at a minimum, one organization that already has a voluntary reclamation certification program may apply. EPA believes that other organizations will also consider applying to become an approved reclamation certification program. EPA believes that third-party certification will better meet EPA's goals. Moreover, the success of the third-party recycle/recovery equipment certification, and the third-party technician certification, demonstrates the effectiveness of this approach. Therefore, EPA is proposing to modify the reclamation requirements to state that reclaimers must instead be certified by an EPA-approved reclaimer certification program. EPA plans to approve certifiers based on the criteria discussed above as soon as the criteria is promulgated. Those reclaimers already certified by EPA will need to be certified by an EPA-approved reclaimer certification program.

Those interested in becoming approved reclamation certification programs would be required to submit information to EPA indicating the ability to conform with all regulatory requirements for certifying and monitoring reclaimers. EPA would review this information and if appropriate, issue a letter of approval.

EPA realizes that provisions must be made for the changeover. Therefore, EPA proposes to continue to permit the reclamation of refrigerant by EPA-approved reclaimers until six months from the date EPA approves of at least one reclamation certification program. During the six months after EPA has approved at least one reclamation certification program, reclaimers not certified by EPA but instead certified by the EPA-approved program would also be permitted to reclaim refrigerant. Those certified by EPA will be required to become certified by an EPA-approved program prior to the end of that six-month period. After that date, reclaimers previously certified by EPA that have not been recertified by an approved third-party, will no longer be considered certified.

EPA requests comment on the adoption of a third-party certification program for reclaimers. EPA is particularly interested in the increased

benefits that may derive from this regulatory scheme rather than the current self-certification program run directly by the Agency. EPA also requests comments on the proposed procedure for converting to third-party certification, including provisions to include reclaimers that are currently certified by a program submitting an application. EPA also requests that any program that intends to apply to become a third-party certifier submit a draft application. EPA believes that reviewing draft applications during the comment period will permit EPA to include information on the timeframe for approving applications in the final rule.

*E. Technician Certification and the Sales Restriction*

1. Recordkeeping

EPA is concerned with the maintenance of records for certified technicians by approved programs that no longer provide test administration. Currently there are more than 90 EPA-approved technician certification programs that provide testing in accordance with § 82.161 and Appendix D. These programs administer and grade tests, maintain records, issue certification credentials, and submit reports to EPA twice each calendar year. EPA believes that technician certification has been very effective. Within 24 months, more than 600,000 technicians were certified. However, it has come to the Agency's attention that since the bulk of existing technicians have become certified, and the certification market now focuses on those first entering this field, some EPA-approved certification programs may choose to discontinue providing this service. To date, three programs, two of which did not actually ever administer tests, have withdrawn.

EPA is concerned with the maintenance of records for technicians who were tested by a program that no longer exists or no longer provides technician certification. EPA believes that the likelihood of this occurring will increase in the future. EPA is concerned that if a technician's certification credentials are lost and the program no longer exists, it may not be possible for the technician to receive duplicate credentials, thus denying the technician the ability to purchase class I or class II refrigerants.

Currently, programs that have been approved to administer the test must maintain records for three years (58 FR 28734). However, EPA does not believe an enforcement mechanism exists that would effectively ensure that this occurs if the program declares bankruptcy. Furthermore, even if the program does continue to maintain the records, access to the records may be difficult if the program itself is no longer in business. Therefore, EPA is considering several potential options.

EPA could require programs to forward their records to EPA. EPA would therefore be responsible for maintaining those records. However, EPA is concerned that the Agency does not have adequate resources for maintaining these records effectively. A second option would be to have the programs send the records to EPA and have EPA choose a suitable existing certification program to maintain the records and forward the records to that program. EPA is uncertain as to adequate criteria that would be used for choosing the appropriate program. With more than 90 existing programs, all approved based on the same criteria, EPA would not be in a position to select a single program without acting in an arbitrary manner. A third option would be to have the program that intends to cease operation determine which active program, willing to accept the records, to submit its records to, and to notify EPA of its decision. In this scenario, all pertinent information, including the records relating to the technicians and the testing information would be forwarded to another program. The program pulling out would notify EPA of its decision, and the recipient of the records would notify EPA upon receipt of the records.

EPA believes the third option represents the most equitable approach. EPA believes that having an existing company maintain records is most appropriate. Therefore, EPA is proposing to promulgate this option.

EPA requests comments on requiring programs that no longer offer technician certification to locate a suitable program for continuation of the maintenance of the relevant records. EPA also requests comment on the two alternative methods for ensuring that recordkeeping is adequately provided.

In addition, EPA is also concerned with whether certification records should be maintained beyond the current three-year requirement. EPA believes that if a technician loses his/her identification card after the three years has passed, it should be possible for a replacement card to be issued. However, without a requirement that records are maintained indefinitely, it is unclear that the approved certification organizations will retain sufficient information to issue new credentials. Therefore, through this action, EPA requests comments on whether or not there are more appropriate timeframes.

2. Technicians Certified to Work on Motor Vehicle Air Conditioners

EPA is concerned about an inconsistency that exists in the sales restriction. Currently, technicians who are certified by either an EPA-approved section 608 or section 609 program, in accordance with § 82.40 and § 82.161, may purchase ozone-depleting refrigerants.[1] At the time the sales restriction was drafted and promulgated in May 1993 (58 *FR* 28714, May 14, 1995), EPA was aware that potential substitutes for CFC–12 for use in motor vehicle air conditioners (MVACs) could include an HCFC or a blend with an HCFC component. Therefore, EPA did not restrict the types of refrigerants that could be purchased by those with section 609 certification.

At the same time, EPA was also drafting and later promulgated regulations regarding acceptable and unacceptable alternatives to class I substances. Those regulations, promulgated under section 612, identify acceptable alternatives in various sectors, including refrigeration. These regulations, known as the Significant New Alternatives Policy (SNAP) Program were not yet promulgated when the sales restriction was promulgated. Therefore, EPA did not know to what extent the refrigeration sector would be subdivided. Subsequently, the SNAP refrigerant sector has been subdivided to indicate which refrigerants are acceptable for various types of appliances. Therefore, since SNAP now clearly delineates which refrigerants are acceptable for use in MVACs, EPA believes it is appropriate for the sales restriction under § 608 to employ a similar provision.

Furthermore, EPA is concerned with reports that those certified to work on MVACs are purchasing refrigerants that are not acceptable for use in MVACs. In all likelihood, this refrigerant is either being improperly installed in MVACs or those technicians may be servicing other appliances in violation of the regulations promulgated under Section 608. The sales restriction is intended to decrease emissions of ozone-depleting substances. If refrigerant not suitable for use in MVACs is improperly installed it may be vented. A technician certified to service MVACs with recovery equipment for use with suitable refrigerants may vent the unsuitable refrigerant rather than risk contaminating the recovery equipment. A person who is not certified to service

[1] 1. The sale of small cans of CFC–12 is further restricted to those certified by an EPA-approved § 609 program.

appliances other than MVACs and purchases refrigerant with the intent of servicing non-MVACs or non-MVAC-like appliances, may not be familiar with the required service practices established by EPA under § 82.156 and intended to ensure the lowest achievable emissions level. Improper service by that technician could lead to the release of the class I or class II refrigerant as well as damage to the appliance.

Therefore, through this action, EPA is proposing to modify the sales restriction. The proposed changes would restrict the sale of refrigerants to those certified in accordance with § 82.34, by a program approved under § 82.40, to purchasing CFC–12 in small cans and refrigerants listed as acceptable for use in MVACs in accordance with all regulations promulgated under Section 612. EPA requests comment on the appropriateness of modifying the sales restriction to limit the types of refrigerant that can be purchased by those certified to service and maintain MVACs under § 609.

3. Transfers Between Wholly-Owned Subsidiaries

EPA has received comments from several organizations where one wholly-owned subsidiary of a holding company would like to transfer refrigerant to another wholly-owned subsidiary of the same holding company. The requirement to reclaim refrigerant before the refrigerant changes ownership applies to these transfers. Therefore, without first reclaiming the refrigerant, these transfers are not permitted. EPA is aware of one company that wanted to make such transfers and had the capability to reclaim refrigerant. This company decided to become certified rather than have a third party involved.

As discussed in other sections of this proposal, EPA's reclamation provisions are designed to protect the refrigerant consumer and the appliances into which used refrigerant is charged. In the example described above, EPA believes the relationship between these two subsidiaries should provide a sufficient means to ensure that transfers between the subsidiaries would be akin to transfers within one company. Therefore, EPA is proposing to provide an exception to the sales for the transfers of refrigerant between two wholly-owned subsidiaries of the same company.

EPA also received comment requesting that EPA permit the transfer of unreclaimed refrigerant between subsidiaries that are not wholly-owned. Since these types of subsidiaries would involve other investors that may have less of a commitment to each of the subsidiaries involved in the transactions, EPA does not believe transfers between these types of subsidiaries are akin to those within one organization. Therefore, EPA is limiting today's proposal to wholly-owned subsidiaries. EPA requests comment on this proposal.

*F. Motor Vehicle Air Conditioner-Like Appliances*

Through this action, EPA would like to modify the definition of Motor Vehicle Air Conditioner (MVAC)-like appliances. § 82.152 states that:

> MVAC-like appliance means mechanical vapor compression, open-drive compressor appliances used to cool the driver's or passenger's compartment of an non-road motor vehicle. This includes the air-conditioning equipment found on agricultural or construction vehicles. This definition is not intended to cover appliances using HCFC–22 refrigerant. (58 *FR* 28713)

Since the promulgation of this definition in May 1993, EPA has received requests to clarify whether various types of appliances are in fact MVAC-like appliances. These appliances include air conditioners on small private planes, boats and trolleys. In these examples EPA has agreed that the appliances are MVAC-like. EPA believes that if the appliance is similar to an MVAC in all substantive manners, it should be treated as an MVAC. However, EPA has become concerned that the definition of MVAC-like should include an upper limit on the amount of refrigerant contained in the appliance. Without an upper limit, the current definition could be construed to include appliances that are not similar to an MVAC in all substantive manners. For example, a chiller located on a marine vessel could be mistakenly considered MVAC-like. Therefore, an upper limit would prevent any possible confusion. To ensure consistency between what is an MVAC and what is MVAC-like, the refrigerant limit for MVAC-like appliances should be similar to the largest amount of refrigerant contained in most MVACs. EPA believes that bus air conditioners using CFC–12 may represent the type of MVAC with the largest average charge size. Moreover, EPA believes that all MVACs contain less than 20 pounds of refrigerant. EPA does not believe that the adoption of a 20-pound limit for MVACs would exclude any appliance that reasonably should be considered MVAC-like.

EPA believes that a limit will provide clarity to those unsure about whether a particular appliance qualifies as MVAC-like, specifically where the charge is larger than that of the average automobile air conditioner, yet smaller than that of the average bus air conditioner. Therefore, EPA is proposing to add a 20-pound ceiling to the definition of MVAC-like appliances.

EPA requests comment on amending the definition of MVAC-like appliances and whether a ceiling of 20 pounds represents an appropriate cutoff.

*G. Changes to the ARI 740 Test Procedure for Refrigerant Recycling and Recovery Equipment*

The final rule published on May 14, 1993 requires that refrigerant recycling and recovery equipment manufactured after November 15, 1993, be tested by an EPA-approved laboratory. The laboratory must verify that the equipment is capable of achieving applicable required evacuation levels and that the equipment releases no more than 3% (previously 5%) of the quantity of refrigerant being recycled through purging of noncondensables. In addition, the laboratory must measure the vapor and liquid recovery rates of the equipment. To perform all of these measurements, the laboratory must use the test procedure set forth in ARI 740–93, an industry test protocol for recycling and recovery equipment that was included in the final rule as appendix B.

During the comment period on the proposed rule, some commenters raised concerns regarding the ARI 740 test protocol. After investigating these concerns, EPA concluded that some were unwarranted, but that others required further investigation and, in some cases, action as discussed in that rule (58 FR 28687). Among the issues requiring more investigation were concerns that (1) the current method for measuring the vapor recovery rate of equipment yields a maximum, rather than an average, recovery rate; (2) the test only tests equipment at one temperature, 75° F, although the performance of recycling and recovery equipment varies significantly depending upon ambient temperature, (3) the test does not include measurement of the quantity of refrigerant that remains in the equipment (e.g., condenser) at the conclusion of the recovery procedure, potentially allowing contamination of subsequent recovery or recycling jobs or release of refrigerant during condenser clearing, and (4) the test does not test equipment for durability, raising the possibility of widespread equipment failure after only a few months of use (58 FR 28682, 28687–88).

Testing experience and international developments have raised other issues

since the rule was promulgated. Underwriters Laboratories (UL), one of the equipment testing organizations approved by EPA, has pointed out the need to adopt standards for external hose permeability and to ensure that recovery and recycling equipment is tested with recovery cylinders no larger than those with which the equipment is used in the field. The standard for recycling and recovery equipment being developed by the International Standards Organization (ISO) addresses refrigerant emissions from oil draining in addition to emissions from air purging and equipment (condenser) clearing, limiting the total that can be released during these procedures to 3% of the total refrigerant processed. Finally, the Industry Recycling Guideline 2 (IRG–2) established a recommended ''clean-up'' standard for recycled refrigerant that is used in the same owner's equipment (Maximum Contaminant Levels of Recycled Refrigerants in Same Owner's Equipment).

EPA has worked closely with the two EPA-approved equipment testing organizations, the Air-Conditioning and Refrigeration Institute (ARI) and Underwriter's Laboratories (UL), to resolve these concerns. EPA has also worked with members of the International Standards Organization (ISO) Committee for Recycling and Recovery Equipment to ensure that the issues are addressed in international standards. With the exception of durability testing, all of the issues are being addressed by voluntary changes to both the ISO draft standard and the ARI 740 standard. EPA participated in the drafting of the revised ARI 740 Standard, and EPA is planning to adopt the latest version of it, ARI Standard 740–1995. In addition, EPA is planning to require that equipment that is advertised as recycling equipment be able to meet the IRG–2 ''clean-up'' standard. EPA is not planning to require additional durability testing for recycling and recovery equipment.

1. Measurement of Vapor Recovery Rates

Before the final rule was published on May 14, 1993, ARI had already indicated that it was willing to adopt a more representative measure of vapor recovery rates (58 FR 28667). (EPA could not adopt this methodology in the May 14, 1993, rule because it had not been proposed.) As discussed in the final rule, the current standard requires measuring the maximum vapor recovery rate, but two pieces of equipment with identical maximum recovery rates can have very different average recovery rates. This is because equipment characteristics that are not important to vapor recovery rates at the beginning of recovery, such as compressor clearance, become increasingly important as recovery progresses. Although EPA has not established minimum vapor or liquid recovery rates, the Agency believes that the best possible information on these rates should be available to technicians to ensure that they purchase recycling and recovery equipment adequate to their needs. Technicians with adequate recovery equipment are less likely than technicians with slow equipment to interrupt the recovery procedure before it is complete. As noted in the final rule, measurement of the vapor recovery rate would require timing the recovery procedure that is already included in the standard. EPA is proposing to adopt the most recent version of ARI 740, 740–1995, which includes a measure of the average recovery rate. The new test measures the change in mass and time elapsed as the pressure of the test chamber is lowered from the saturation pressure of the refrigerant at 24° C (75° F) (or from atmospheric pressure, if the refrigerant boils at a temperature above 75°) to the lower of atmospheric pressure or 10% of the initial pressure. (As discussed below, the test is repeated with R–22 at 40° C (104° F).) This provision is similar to a provision in the draft ISO standard, which measures the change in mass and time elapsed as the pressure of the test chamber is lowered from the saturation pressure of the refrigerant to 15% of that pressure.

For R–12, 10% of the saturation pressure at 75° F is 9.2 psia, or 11 inches of mercury vacuum, which is slightly lower than the final recovery vacuum required for recovery equipment used with R–12 appliances containing less than 200 pounds of refrigerant (10 inches of vacuum), but is higher than the final recovery vacuum required for recovery equipment used with larger R–12 appliances (15 inches of vacuum). For R–22, 10% of the saturation pressure is 14.7 psia, which means that atmospheric pressure (14.7 psia) would be the final pressure. Atmospheric pressure is also the final recovery vacuum required for recovery equipment used with R–22 appliances containing less than 200 pounds of refrigerant, but again, is higher than the final recovery vacuum required for larger R–22 appliances (10 inches of vacuum). Finally, for R–11, 10% of the saturation pressure is 1.47 psia (27 inches of vacuum), which again is slightly higher than the final recovery vacuum required for recovery equipment used with R–11 appliances (29 inches of vacuum).

EPA requests comment on adopting this method of measuring the average recovery rate of recycling and recovery appliances. EPA specifically requests comment on whether the final pressure of 10% of the saturation pressure is close enough to the required vacuum to ensure that the test is representative of recovery rates in the field. EPA also requests comment on whether the current measure of maximum vapor recovery rates yields any useful information that the new test would not, and on whether it should therefore be retained.

2. High-Temperature Testing

One of the most important additions to the ARI 740 standard is a requirement that the vapor recovery rate and final recovery vacuum of recovery and recycling equipment be measured at 40° C (104° F), in addition to 24° C (75° F), for recovery and recycling equipment intended for use with high-pressure refrigerants. As noted in the final rule published on May 14, 1994, recovery and recycling equipment in the field is likely to have to function at temperatures considerably higher than 75° F (58 FR 28683). For instance, recovery often takes place on rooftops in the summer, where temperatures frequently exceed 100° F. The performance of recovery and recycling equipment is likely to be affected by such high temperatures (58 FR 28688). This is because high temperatures raise the saturation pressure of the refrigerant in the recovery tank, raising the compression ratio against which the compressor in the recovery device must work to evacuate the appliance. This can both slow recovery and prevent the equipment from achieving vacuums that it can achieve at 75° F. In some cases, equipment can actually stop running at high temperatures, because pressures rise too high or because the motor overheats or draws too much current in its attempt to recover the refrigerant, tripping safety switches. Underwriters Laboratories reported that over 50 percent of refrigerant recovery and recycling units initially failed to operate continuously during high temperature testing that is required as part of UL's safety testing (letter from Glenn Woo and Larry Kettwich to Debbie Ottinger)[2].

EPA believes that the high-temperature tests included in the revised ARI 740 standard would provide useful information on equipment's

[2] The equipment was redesigned to operate at elevated temperatures before it was UL listed.

ability and quickness to draw vacuums at high temperatures. At the same time, these tests are likely to reveal many of the problems that might occur in equipment operated at high temperatures in the field (as has UL's safety test at 104° F), such as thermal or electrical overloading of motors. The test requires that the mixing chamber, a container with a minimum volume of three cubic feet, be filled with refrigerant vapor (but no liquid) at the refrigerant's saturation pressure at 104° F. As in the 75° test, this vapor is then recovered until the final recovery vacuum is reached. Also as in the 75° test, the vapor recovery rate is measured while the pressure in the mixing chamber is reduced to 10% of the initial pressure. Because repeating the test with all of the refrigerants for which the equipment is rated would considerably raise the costs of certification, the high-temperature test is performed with one refrigerant, R–22. (If the recycling or recovery equipment is not rated for R–22, then equipment is tested with the refrigerant with the lowest boiling point, and therefore highest saturation pressure, for which it is rated.)

R–22 is used because it has the second highest saturation pressure of the common high-pressure refrigerants and because it has a high discharge temperature, putting more stress on both the compressor and motor of recovery equipment than other high pressure refrigerants. Thus, if a recovery device passes high-temperature testing with R–22, it is likely to be able to perform at high temperatures with all high-pressure refrigerants. This expectation is supported by experience; according to UL personnel, most recycling and recovery equipment (except that intended for use exclusively with motor vehicle air conditioners) that failed high-temperature testing failed during tests involving R–22. In addition, R–22 is the most common high-pressure refrigerant used outside of the motor vehicle air conditioner sector.

Because the 104° vapor recovery rate measurement begins at a higher pressure than the 75° vapor recovery rate measurement, it also ends at a higher pressure, atmospheric pressure. (Ten percent of the initial saturation pressure is actually 22.3 psia, which is higher than atmospheric pressure, 14.7 psia, but the test requires recovery at least to atmospheric pressure.) Atmospheric pressure is the level to which appliances containing less than 200 pounds of R–22 must be evacuated; however, it is higher than 10 inches of vacuum, which is the level to which appliances containing more than 200 pounds of R–22 must be evacuated. EPA requests comment on whether the final pressure of 10% of the saturation pressure is close enough to the required vacuums to ensure that the test is representative of high-temperature recovery rates in the field.

The test procedure mimics what is often the most stressful portion of the recovery process at high temperatures, the recovery of vapor that remains in recycling and recovery equipment after all liquid has been recovered. Many recovery devices recover liquid from appliances, evaporating it to separate it from contaminants and then recondensing it to store it in the recovery tank. As long as liquid is available to evaporate, the evaporator can be used to absorb heat from the condenser. However, when no liquid remains in the appliance (or the mixing chamber that represents it in the ARI 740–1995 test procedure), the evaporator can no longer absorb any heat. Thus, the condenser, along with the compressor, begins to heat up. At the same time, the vapor pressure inside the appliance (or mixing chamber) begins to fall as vapor is pumped out. This has two consequences. First, it raises the compression ratio between the inlet and discharge sides of the compressor, raising the discharge temperature of the refrigerant. Second, it decreases the flow of refrigerant over the motor that hermetic compressors rely upon to cool the motor. By the time a ten-inch vacuum is reached, this flow is less than five percent of the flow that the motor started out with. Both of these effects accelerate the heating of the motor and compressor.

EPA believes that, in general, the high-temperature vapor recovery procedure in the revised standard is more likely to identify inadequate recycling and recovery equipment than the vapor recovery procedure in the current standard. However, the current standard duplicates one type of stress on recovery equipment that the revised standard does not. This stress is that experienced by recovery equipment that is capable of recovering only vapor when liquid is present in the appliance.

When liquid is present in the appliance or test chamber, the mass flow through the recovery or recycling equipment is at its maximum. This yields a high estimate of the vapor recovery rate; however, it also imposes a high power demand on the recovery equipment's compressor as the compressor attempts to move the refrigerant, and it burdens the recovery equipment's condenser with a relatively large amount of heat to reject (because this heat is related not only to the temperature but also to the mass of the refrigerant flowing through the condenser).

A laboratory that participated in the development of ARI 740–1995 expressed concern that equipment that had failed (through tripping of safety switches) the vapor recovery test of ARI 740–1993 might pass the vapor recovery test in ARI 740–1995. To investigate this concern, the laboratory tested the equipment first using the vapor recovery test in ARI 740–1993, and then the high-temperature vapor recovery test in ARI 740–1995. The laboratory found that equipment that cut out after 18 minutes of operation under ARI 740–1993 cut out after less than 10 minutes of operation under ARI 740–1995. (It should be noted that ARI 740–1993 does not expressly require lengthy, continuous vapor recovery at the saturation pressure of the refrigerant.) In view of this result and the fact that most recovery equipment is capable of recovering liquid, EPA believes that ARI 740–1995 will detect faulty equipment.

EPA requests comment on the usefulness of high-temperature testing, and on the choice of R–22 as a representative refrigerant.

3. Use of Representative Recovery Cylinders

To further ensure that equipment testing is representative of likely performance in the field, ARI 740–1995 specifies that recovery cylinders used in testing must be the same size as those sold with the equipment, and must be at the saturation pressure of the refrigerant when testing begins. Use of oversize or evacuated cylinders can yield artificially high recovery rates and artificially deep recovery vacuums, because the recovery compressor does not have to work as hard to move refrigerant into oversize or evacuated cylinders as it does to move refrigerant into normal size cylinders at the saturation pressure of the refrigerant. Both of these requirements codify procedures that are being followed voluntarily at both of the EPA-approved equipment testing laboratories.

4. Limiting Emissions from Condenser Clearing, Oil Draining, Purging, and External Hoses

ARI 740–1995 addresses three potential sources of refrigerant emissions that ARI 740–1993 did not address: condenser clearing, oil draining, and emissions from external hoses. As noted in the May 14, 1994 final rule, substantial quantities of refrigerant may remain in the condensers of recycling and recovery equipment after refrigerant has been transferred to a recovery tank or back

into an appliance. Unless this refrigerant is properly removed, it will either contaminate subsequent batches of refrigerant, a serious concern when switching refrigerants (e.g., from R–12 to R–22), or be released to the atmosphere. There are a number of methods to remove this refrigerant properly; however, some of these methods are more complicated and time-consuming than others. One of the most important factors in the speed and effectiveness of the refrigerant clearing process is the design of the recovery or recycling equipment itself.

To help ensure that the design of recovery equipment minimizes the amount of residual refrigerant that either escapes to the atmosphere or contaminates subsequent batches, ARI 740–1995 includes measurements both of the mass of refrigerant that is released during clearing and of the mass of refrigerant that remains in the equipment after clearing is complete. The mass of refrigerant released during clearing is added to the masses released during non-condensables purging and oil draining (see below); this total cannot exceed three percent of the total mass of refrigerant processed through the equipment. The mass of refrigerant that remains in the equipment is not limited, but is reported in the equipment ratings so that prospective buyers can use the information in their purchasing decisions.

In these measurements and limits, ARI 740–1995 is similar to the draft ISO standard for recycling and recovery equipment. The one significant difference is that the draft ISO standard, in addition to weighing the residual refrigerant that remains trapped in the equipment, measures cross-contamination directly by processing a batch of a different refrigerant through the equipment after clearing is complete. This batch is then analyzed to determine the concentration of the first refrigerant using gas chromatography. The drafters of the ARI 740–1995 standard decided not to include this cross-contamination test because they believed that it would yield little additional information, while adding considerable expense to the test procedure. (Gas chromatography is one of the more costly components of certification testing.) Based on information gathered to date, EPA concurs; however, the Agency requests comment on whether the mass of residual refrigerant is likely to be a good predictor of cross-contamination or whether a more extensive test of cross-contamination is required.

To help ensure that the clearing procedure is not excessively complicated or time-consuming, ARI 740–1995 also requires that the manufacturer provide a method and instructions that accomplish connections and clearing within 15 minutes. Any special equipment required for clearing, other than a vacuum pump or manifold gauge, must be provided by the manufacturer along with the recovery or recycling equipment, and the clearing procedure cannot rely upon a storage cylinder below the saturated pressure of the refrigerant. In setting up these constraints, ARI recognized that procedures that require exotic equipment or excessive time are less likely to be followed than procedures that are simple and fast.

Another source of potential emissions is oil draining. Refrigerant oils are designed to mix well with refrigerants so that they flow easily within the refrigeration system. A drawback to this characteristic is that significant quantities of refrigerant can remain entrained in oil that is withdrawn from appliances. Because several system contaminants tend to concentrate in the oil, many recycling and recovery machines include an oil separator that must be periodically emptied. To ensure that oil draining does not result in excessive refrigerant emissions, the ARI 740–1995 procedure measures the mass of refrigerant that is released from oil after its removal from the recovery or recycling equipment. As noted above, the sum of the masses of this refrigerant, the refrigerant emitted during condenser clearing, and the refrigerant emitted during noncondensables purging cannot exceed three percent of the mass of refrigerant processed by the equipment.

The third source of emissions addressed by ARI 740–1995 is external hose assemblies. Although ARI 740–1993 includes a permeability limit for internal hoses (of 5.8 g/cm$^2$/yr), it does not include such a limit for external hoses. ARI 740–1995 establishes a limit of 3.9 g/cm$^2$/yr at 48.8° C (120° F) for all hose assemblies, to be tested under the conditions of UL 1963. (Hoses that are already UL recognized as having passed UL 1963 need not be retested).

EPA believes that these emissions limits will ensure that recycling and recovery equipment achieves the lowest achievable level of emissions. EPA requests comment on adopting these emissions limits from the ARI 740–1995 standard.

5. Requirements for Equipment Advertised as ''Recycling Equipment''

Because EPA is proposing to require that representative samples of used refrigerants be chemically analyzed to verify their purity before they are used in another owner's equipment, EPA does not believe that it is necessary to require that refrigerant be processed or recycled in any particular way. The analysis itself guarantees that refrigerant meets the required purity standard. For this reason, EPA is not requiring that contractors use recycling as opposed to recovery equipment to handle refrigerants. (Recovery equipment is designed simply to recover the refrigerant without cleaning it; recycling equipment is designed to clean the refrigerant to some extent.) However, EPA believes that technicians and contractors should have some assurance that equipment that is marketed as ''recycling equipment'' is capable of cleaning up used refrigerant to some minimum level. This assurance would be especially useful to contractors who use recycling equipment to purify refrigerant for use in the same owner's equipment because these contractors may not use any other means to assure refrigerant purity.

Although ARI 740–1995 includes a test of the ability of recycling equipment to clean up a standard sample of dirty refrigerant and requires that the final contaminant levels of the recycled refrigerant be presented for each make and model, it does not establish any maximum allowable levels for these contaminants. However, IRG–2 contains recommended maximum contaminant levels for refrigerant that is returned to its original equipment or to equipment with the same owner. IRG–2 further states:

> Recycling equipment that is certified to ARI Standard 740, ''Performance of Refrigerant Recovery/Recycling Equipment,'' and capable of consistently cleaning refrigerant to the contaminant levels in this Table should be used. The refrigerant sample used in ARI Standard 740 is representative of a highly contaminated system, so recycling equipment that can clean the refrigerant in this test to the contaminant levels in the Table has acceptable cleaning capabilities.

Thus, the ''clean-up'' test in the ARI 740 Standard and the maximum contaminant levels in IRG–2 can be combined to establish a test and standard for recycling equipment. EPA is proposing that equipment that is marketed as ''recycling'' equipment would have to be able to clean up the ARI 740 sample of dirty refrigerant to the maximum contaminant levels listed in IRG–2 when tested under the conditions of ARI 740. Below is a reprint of the Maximum Contaminant Levels of Recycled Refrigerants included in the IRG–2 standard. EPA is proposing to make the change effective 90 days after publication of the final

rule to give manufacturers the opportunity to change their advertising and marketing materials, if necessary. EPA requests comment on this proposal and the proposed effective date.

MAXIMUM CONTAMINANT LEVELS OF RECYCLED REFRIGERANTS IN SAME OWNER'S EQUIPMENT

| Contaminants | Low pressure systems | R–12 systems | All other systems |
|---|---|---|---|
| Acid Content (by wt.) | 1.0 PPM | 1.0 PPM | 1.0 PPM |
| Moisture (by wt.) | 20 PPM | 10 PPM | 20 PPM |
| Non Condensable Gas (by vol.) | N/A | 2.0% | 2.0% |
| High Boiling Residues (by vol.) | 1.0% | 0.02% | 0.02% |
| Chlorides by Silver Nitrate Test | No turbidity | No turbidity | No turbidity |
| Particulates | Visually clean | Visually clean | Visually clean. |
| Other Refrigerants | 2.0% | 2.0% | 2.0% |

6. Durability Testing

One suggested addition to ARI 740–1993 that was not included in ARI 740–1993 is mandatory, long-term durability testing of recovery and recycling equipment. Equipment durability is of concern because if equipment repeatedly fails prematurely, technicians may eventually elect not to spend the money to repair or replace it, resulting in refrigerant emissions. As noted in the final rule published on May 14, 1994, recovery and recycling equipment may be constructed using components very similar to those in air-conditioning and refrigeration equipment, but recovery and recycling equipment is regularly subject to more stressful conditions than most air-conditioning and refrigeration equipment. For instance, recovery and recycling equipment will often operate at higher than ideal temperatures as it pulls vacuums on appliances.

To investigate the need for mandatory third-party equipment durability testing, EPA has met with the commenters who supported such testing and with ARI and manufacturers of recovery and recycling equipment. EPA has also used its information collection authority under section 114 of the Act to survey manufacturers of recovery and recycling equipment regarding causes and rates of recovery equipment failure. Finally, EPA has considered the extent to which the goals of mandatory durability testing may already be met by manufacturers' in-house durability testing, market forces, and the revisions to the ARI 740 Standard discussed above.

Based on this investigation, EPA does not believe that mandatory, third-party durability testing is necessary to ensure adequate equipment performance. First, equipment durability has a much less direct relationship to refrigerant emissions than do refrigerant recovery levels or rates. In fact, unless recovery equipment is so short-lived that technicians repeatedly wear it out and grow tired of repairing it or replacing it, durability has no effect on refrigerant emissions. Detailed statistics obtained from manufacturers indicate that recovery equipment does not wear out this quickly; failure rates generally fall below five percent per year.

Second, to the extent that durability has been a problem, the market itself appears to have acted to address it. According to manufacturers, models that experienced relatively high failure rates have either been taken off the market or have had their designs corrected to address the problem. An article from the *Air Conditioning, Heating, and Refrigeration News* supports this view [3]. Contractors noted either that their recovery units were holding up well, or that they had changed their purchasing criteria to emphasize durability over price. The contractors who had changed their criteria observed that job interruptions caused by recovery equipment breakdowns had cost them business. Similarly, recovery equipment manufacturers stated that excessive repairs under warranty were expensive to bear, giving them a clear incentive to increase equipment longevity and reliability.

Third, manufacturers observed that recovery technology in general, including features to enhance equipment durability, has advanced markedly since refrigerant recovery was first required in 1992. Many problems emerged during the first year of manufacture and use of recovery equipment, which involved adapting existing refrigeration technology to new demands. These problems have been detected and addressed.

Fourth, EPA believes that any new equipment that is likely to fail under stress is likely to be identified by the enhanced ARI 740 Standard, which, as discussed above, includes new, more strenuous testing at high temperatures. Testing laboratories have indicated that equipment that passed the old test ''marginally'' have not passed the new one.

Finally, ARI and manufacturers have noted that durability testing, because it is necessarily lengthy, would add considerable cost to the equipment certification procedure. One test that was submitted by a commenter who supported durability testing would require the continuous operation of the equipment for 30 hours. This would double or triple the cost of equipment certification. At the same time, the information gathered from such a test may not be applicable to the field, since recovery equipment is seldom required to function continuously for 30 hours. Given the improvements in recovery equipment that have resulted from the market and the enhanced ARI 740 standard, EPA does not believe that any further environmental benefits gained from durability testing would justify its costs. Therefore, today's action does not propose mandatory durability testing of recycling and recovery equipment.

*H. Major and Minor Repairs*

Effective July 13, 1993, technicians were required to evacuate air-conditioning and refrigeration equipment to established vacuum levels. However, EPA granted an exception to the evacuation requirements for non-major repairs that are not followed by an evacuation of the appliance to the environment, and for appliances with leaks that make the required evacuation levels impossible to attain. EPA intended non-major repairs to include procedures that involve uncovering only a small opening in the appliance, that take place in only a few minutes, and that are not followed by an evacuation of the appliance to the environment (high-level evacuation). EPA believed that such repairs would

[3] ''Hot Customers Don't Sweat Over Extra Recovery Costs,'' B. Checket-Hanks, *Air-Conditioning, Heating, and Refrigeration News,* August 21, 1995.

result in the release of very little refrigerant to the environment.

However, EPA did not explicitly define ''non-major'' repairs; instead, EPA defined ''major'' repairs as maintenance, service, or repair that involves removal of the compressor, condenser, evaporator, or auxiliary heat exchanger coil. These procedures are relatively time-consuming and/or leave large openings in the system through which refrigerant can escape (and air and moisture can enter). After such procedures, evacuation of the system to the environment is customarily performed, expelling any residual refrigerant into the atmosphere.

1. Comments Received Since the Final Rule

Since the final rule was published, EPA has received several comments that request that EPA expand and clarify the current definition of ''major'' and explicitly define ''non-major'' repairs.

Commenters believed that the current definition of major repairs was too narrow, excluding some types of repair that result in considerable refrigerant release. They recommended that the definition be modified to reflect the following: major repairs or service procedures that (1) involve the removal of the compressor, condenser, evaporator or auxiliary heat exchanger, or (2) require the appliance to be open to the atmosphere for an extended period of time, or (3) require the uncovering of large openings that cannot be isolated or capped. The commenters also recommended that before major repairs were undertaken, appliances should be required to be evacuated to 25 mm Hg absolute (per EPA standards).

Several commenters maintained that non-major repairs should be explicitly defined as repairs or service procedures that involve uncovering only a small opening in the appliance and take place in only a few minutes, or that involve openings that may be capped or isolated using isolation valves, thereby limiting the quantity of refrigerant lost to the atmosphere. Additionally, commenters recommended that technicians be required to meet the following standards for minor repairs: 1) technicians must be able to hold the unit at 0 PSIG; (2) the unit may not be open for more than 15 minutes.

One commenter submitted the following list, which classifies several common service procedures or repairs as either major or minor.

| Maintenance/service task | Minor | Major |
|---|---|---|
| 1. Shaft Seal Replace (OCV) | | XXX |
| 2. Oil Change (oil temp @ 135 deg.) | XXX | |
| 3. Oil Filter Change | XXX | |
| 4. Vent Line Solenoid Valve Repair | XXX | |
| 5. Vent Line Solenoid Replace | | XXX |
| 6. Oil Pump and/or Motor | | XXX |
| 7. Oil Pressure Regulator | XXX | |
| 8. 3rd Stage Vane Bellows Repair/Replace | | |
| 9. 1st Stage Vane Oper. Repair/Replace | XXX | |
| 10. Oil Eductor | XXX | |
| 11. Motor Cooling Orifice | XXX | |
| 12. Thrust Bearing (ball bearing) Replace | | XXX |
| 13. Thrust Bearing Cover Gasket Replace | XXX | |
| 14. Pressure Control/Transducer/Gage Replace | XXX | |
| 15. Suction Elbow Gasket Replace | | XXX |
| 16. Terminal Board Gasket Replace | | XXX |
| 17. Terminal Stud ''O'' Ring Replace | | XXX |
| 18. Purifier Purge Drier Core Replace | XXX | |
| 19. Old Style Purge Service and Repair (all) | XXX | |
| 20. Economizer Gasket Replace (upper) | XXX | |
| 21. Economizer Gasket Replace (lower) | | XXX |
| 22. Hot Gas Bypass/Free Cool. Val. Stem Repair | XXX | |
| 23. Hot Gas Bypass/Free Cool. Val. Gasket Replace | | XXX |
| 24. Oil Cooler replace with Isolation Valves | XXX | |
| 25. Oil Cooler replace without Isolation Valves | | XXX |
| 26. Oil Heater (direct immersion) Replace | XXX | |
| 27. Orifice Check/Clean ''Upper'' 15 Minutes Max. | XXX | |
| 28. Orifice Work Upper/Lower Over 15 Minutes | | XXX |
| 29. Rupture Disk Replace | XXX | |
| 30. Purge Solenoid Valve Replace | XXX | |
| 31. Discharge Spool Gasket Replace | | XXX |
| 32. Oil Sump Gasket Replace | | XXX |
| 33. Sight Glass Replace (Evap. glass or any solder type) | | XXX |
| 34. Sight Glass Replace (oil system, non-solder) | XXX | |
| 35. Valves, Service, Liquid | XXX | |
| 36. Valves, Service, Vapor | XXX | |
| 37. Flare Fitting Repair | XXX | |
| 38. Solder or Braze Joint Repair, Vapor Section | XXX | |
| 39. Solder or Braze Joint Repair, Liquid Section | | XXX |
| 40. Oil Cooler Repair/Replace | | XXX |
| 41. Float Chamber Gasket Replace or Float Repair | | XXX |
| 42. Motor Temp. Sensor Place O'Ring Replace | XXX | |
| 43. Rupture Guard Installation | XXX | |

2. Proposed Definitions

EPA agrees with the commenters that major repairs of low-pressure chillers have been defined too narrowly and should be expanded. EPA is therefore proposing to revise the definitions of major repairs and to define non-major repairs as follows:

(a) Non-Major Repairs of Low-Pressure Chillers. To be classified as non-major repairs or service procedures, the procedure or repair must (1) involve uncovering only a small opening (less than 2 inches in diameter) in the appliance, or involve openings that may be capped or isolated using isolation valves, (2) require the appliance to be open for no more than 15 minutes, and (3) permit the technician to hold the appliance at 0 psig.

(b) Major Repairs for Low-Pressure Chillers. Major repairs for low-pressure chillers: (1) involve removal of the compressor, condenser, evaporator or auxiliary heat exchanger, (2) require the appliance to be open to the atmosphere for more than 15 minutes, or (3) involve a large opening.

EPA requests comments on these definitions. EPA is particularly interested in whether these definitions are specific enough, whether other types of repairs should be considered and whether this definition is consistent with industry practices and/or terminology.

*I. Change in the Definition of Small Appliance*

1. Background

On May 14, 1993, EPA published final regulations expanding its proposed definition of ''small appliance.'' EPA had previously proposed a definition for small appliances that included air-conditioning or refrigeration equipment containing less than one pound of charge during normal operation.

EPA received a number of comments that the one-pound limit used in the proposed definition was too restrictive. Commenters also stated that room air conditioners, packaged terminal air conditioners, and packaged terminal heat pumps are sufficiently similar to household refrigerators and freezers to justify inclusion in the definition of ''small appliances.''

EPA agreed with these comments and expanded the definition of small appliances to the following:

Small appliance means any of the following products that are fully manufactured, charged, and hermetically sealed in a factory with five (5) pounds or less of refrigerant: Refrigerators and freezers designed for home use, room air conditioners (including window air conditioners and packaged terminal air conditioners), packaged terminal heat pumps, dehumidifiers, under-the-counter ice makers, vending machines, and drinking water coolers.

2. Additional Comments

Since the promulgation of the final rule, EPA has received additional comments requesting further expansion of the definition of small appliances to include units that meet the criteria for small appliances described in the beginning of the definition, but that are not specifically listed at the end of the definition. EPA could accomplish this by making the list of appliances in the definition illustrative rather than restrictive, by removing the list of appliances from the definition (leaving only the criteria), or by explicitly adding refrigerators and freezers built for medical research, industrial research and processes, and as components in other equipment, to the definition.

These comments stated that these refrigerators and freezers used for medical research, industrial research and processes and as components in other equipment (such as purge units in chillers) are extremely similar to the products designed for home use but are excluded from language of the current definition of small appliances. Commenters stated that these units meet the spirit of the definition of small appliances in that they are hermetically sealed in the factory with five (5) pounds of refrigerant or less, rarely require entry into the system and rarely develop refrigerant leaks. Thus, the definition should be expanded to treat them the same way in the rule as household refrigerators and freezers.

3. Today's Proposal

EPA agrees with the commenters that refrigerators and freezers that are built for medical research, industrial research, or processes, or that used as components in other equipment, and that are hermetically sealed at the factory and contain less than five (5) pounds of charge, should be added to the definition of small appliances. EPA is therefore proposing to revise the final definition of ''small appliances'' to:

Small appliance means any product that is fully manufactured, charged and hermetically sealed in a factory with five (5) pounds or less of refrigerant, including, but not limited to, refrigerators and freezers designed for home use, as components in other equipment, medical research, or industrial research, room air conditioners (including window air conditioners and packaged terminal heat pumps), dehumidifiers, under-the-counter ice makers, vending machines, and drinking water coolers,

Note that the list of appliances in this revised definition is illustrative rather then restrictive. EPA requests comments on this proposed definition of small appliances. EPA is particularly interested in whether it would be helpful to list additional examples of appliances that would be considered ''small appliances'' under the criteria of the definition.

III. Summary of Supporting Analysis

*A. Executive Order 12866*

Under Executive Order 12866 (58 FR 51735, October 4, 1993), the Agency must determine whether this regulatory action is ''significant'' and therefore subject to OMB review and the requirements of the Executive Order. The Order defines ''significant'' regulatory action as one that is likely to lead to a rule that may:

(1) Have an annual effect on the economy of $100 million or more, or adversely and materially affect a sector of the economy, productivity, competition, jobs, the environment, public health or safety, or State, local, or tribal governments or communities;

(2) Create a serious inconsistency or otherwise interfere with an action taken or planned by another agency;

(3) Materially alter the budgetary impact of entitlement, grants, user fees, or loan programs or the rights and obligations of recipients thereof; or

(4) Raise novel legal or policy issues arising out of legal mandates, the President's priorities, or the principles set forth in the Executive Order.

It has been determined by OMB and EPA that this proposed action to amendment to the final rule is not a ''significant regulatory action'' under the terms of Executive Order 12866 and is therefore not subject to OMB review under the Executive Order.

*B. Unfunded Mandates Act*

Section 202 of the Unfunded Mandates Reform Act of 1995 (''Unfunded Mandates Act'') requires that the Agency prepare a budgetary impact statement before promulgating a rule that includes a Federal mandate that may result in expenditure by State, local, and tribal governments, in aggregate, or by the private sector, of $100 million or more in any one year. Section 203 requires the Agency to establish a plan for obtaining input from and informing, educating, and advising any small governments that may be significantly or uniquely affected by the rule.

Under section 205 of the Unfunded Mandates Act, the Agency must identify and consider a reasonable number of

regulatory alternatives before promulgating a rule for which a budgetary impact statement must be prepared. The Agency must select from those alternatives the least costly, most cost-effective, or least burdensome alternative that achieves the objectives of the rule, unless the Agency explains why this alternative is not selected or the selection of this alternative is inconsistent with law.

Because this NPRM is estimated to result in the expenditure by State, local, and tribal governments or private sector of less than $100 million in any one year, the Agency has not prepared a budgetary impact statement or specifically addressed the selection of the least costly, most cost-effective, or least burdensome alternative. Because small governments will not be significantly or uniquely affected by this rule, the Agency is not required to develop a plan with regard to small governments. As discussed in this preamble, many aspects of this NPRM proposes to provide increased flexibility that may have the net effect of reducing the burden of part 82 subpart F of the Stratospheric Protection regulations on regulated entities, including State, local, and tribal governments or private sector entities.

*C. Paperwork Reduction Act*

The information collection requirements in this rule will be submitted to by the Office of Management and Budget (OMB) under the Paperwork Reduction Act, 44 U.S.C. 3501 et seq. and will be assigned a control number. OMB) under the Paperwork Reduction Act, 44 U.S.C. 3501 et seq.

Since there are additional informational collection requirements required by this proposed amendment, EPA has determined that the Paperwork Reduction Act does apply to this proposed rulemaking and a revised Information Collection Request document is being prepared.

Send comments regarding the burden estimate or any other aspect of this collection of information, including suggestions for reducing this burden to Director, Regulatory Information Division; EPA; 401 M Street SW. (Mail Code 2136); Washington, DC 20460; and to the Office of Information and Regulatory Affairs, Office of Management and Budget, Washington, DC 20503, marked ''Attention: Desk Officer for EPA.''

*D. Regulatory Flexibility Act*

The Regulatory Flexibility Act, 5 U.S.C. 601–602, requires that Federal agencies examine the impacts of their regulations on small entities. Under 5 U.S.C. 604(a), whenever an agency is required to publish a general notice of proposed rulemaking, it must prepare and make available for public comment an initial regulatory flexibility analysis (RFA). Such an analysis is not required if the head of an agency certifies that a rule will not have a significant economic impact on a substantial number of small entities, pursuant to 5 U.S.C. 605(b).

EPA believes that any impact that this amendment will have on the regulated community will either serve to provide relief from otherwise more burdensome requirements, or will not have a negative economic impact on a substantial number of small entities. An examination of the impacts on small entities was discussed in the initial final rule promulgated under § 608 (58 FR 28660). That final rule assessed the impact the rule may have on small entities. A separate regulatory impact analysis was developed. That impact analysis accompanied the final rule and is contained in Docket A–92–01.

I certify that this amendment to the refrigerant recycling rule will not have any additional negative economic impacts on any small entities.

List of Subjects in 40 CFR Part 82

Environmental protection, Air pollution control, Contractors, Laboratories, Major repairs, Minor repairs, Reclaimers, Reclamation, Recycling, Reporting and recordkeeping requirements, Technician.

Dated: February 14, 1996.

Carol M. Browner,

*Administrator.*

Part 82, chapter I, title 40, of the Code of Federal Regulations, part 82, is proposed to be amended as follows:

## PART 82—PROTECTION OF STRATOSPHERIC OZONE

1. The authority citation for part 82 continues to read as follows:

Authority: 42 U.S.C. 7414, 7601, 7671–7671q.

2. Section 82.152 is amended by removing the definition for ''Major repair,'' by revising the definition for ''MVAC-like appliance,'' ''reclaim,'' and ''small appliance:'' and by adding new definitions in alphabetical order to read as follows:

**§ 82.152 Definitions.**

* * * * *

*Contractor-reclaimed refrigerant* means refrigerant that has remained in custody of a single technician or contractor and a representative sample of that refrigerant as defined in this section has been chemically analyzed by a certified laboratory to determine that it has been reprocessed to at least the purity specified in the ARI Standard 700–1993, Specifications for Fluorocarbon Refrigerants (appendix A to 40 CFR part 82, subpart F). Refrigerant reprocessed in this manner will be considered reclaimed refrigerant consistent with the definition of reclaim contained in this section.

* * * * *

*Major repairs of low-pressure chillers* means repair involving removal of the compressor, condenser, evaporator or auxiliary heat exchanger, or any repair that requires the appliance to open to the atmosphere for more than 15 minutes or that requires large openings to be uncovered.

* * * * *

*MVAC-like appliance* means mechanical vapor compression, open-drive compressor appliances with a normal charge of 20 pounds or less of refrigerant used to cool the driver's or passenger's compartment of a non-road motor vehicle. This includes the air-conditioning equipment found on agricultural or construction vehicles. This definition is not intended to cover appliances using HCFC–22 refrigerant.

* * * * *

*Non-major repair of low pressure chillers* means any service procedures or repairs that: (1) involve uncovering only a small opening (less than 2 inches in diameter) in the appliance for no more than 15 minutes, or (2) involve openings that may be capped or isolated using isolation valves, and (3) permit the technician to hold the appliance at 0 psig.

* * * * *

*Reclaim* refrigerant means to reprocess refrigerant to at least the purity specified in the ARI Standard 700–1995, Specifications for Fluorocarbon Refrigerants (appendix A to 40 CFR part 82, subpart F), and to verify this purity using the analytical methodology prescribed in the ARI Standard 700–1995. Contractor-reclaimed refrigerant as defined in this section is included in this definition.

* * * * *

*Representative sample* means for the purposes of 40 CFR Part 82, subpart F, a sample taken from each container of refrigerant to be chemically analyzed and tested to ARI Standard 700–1995 prior to packaging for resale or reuse. Such samples will be at least 500 ml and shipped in stainless steel test cylinders that include ¼″ valve assembly and pressure relief rupture

disc. Cylinders shall be rated by the Department of Transportation.

* * * * *

*Small appliance* means any product that is fully manufactured, charged, and hermetically sealed in a factory with five (5) pounds or less of refrigerant, including, but not limited to, refrigerators and freezers designed for home use or for medical or industrial research, room air conditioners (including window air conditioners and packaged terminal air heat pumps), dehumidifiers, under-the-counter ice makers, vending machines, and drinking water coolers.

* * * * *

3. Section 82.154 is amended by revising paragraphs (g), (h), and (m) to read as follows:

**§ 82.154 Prohibitions.**

* * * * *

(g) No person may sell or offer for sale for use as a refrigerant any class I or class II substance consisting wholly or in part of used refrigerant unless:

(1) The class I or class II substance has been reclaimed as defined in § 82.152;

(2) The class I or class II substance was used only in an MVAC or MVAC-like appliance and is to be used only in an MVAC or MVAC-like appliance and recycled in accordance with 40 CFR Part 82, Subpart B;

(3) The class I or class II substance is contained in an appliance that is sold or offered for sale together with the class I or class II substance; or

(4) The class I or class II substance is being transferred between two wholly-owned subsidiaries of the same holding company.

(h) No person may sell or offer for sale for use as a refrigerant any class I or class II substance consisting wholly or in part of used refrigerant unless:

(1) The class I or class II substance has been reclaimed by a person who has been certified as a reclaimer pursuant to § 82.165 or the substance has undergone contractor reclamation;

(2) The class I or class II substance was used only in an MVAC or MVAC-like appliance and is to be used only in an MVAC or MVAC-like appliance and recycled in accordance with 40 CFR 82 part Subpart B;

(3) The class I or class II substance is contained in an appliance that is sold or offered for sale together with the class I or class II substance; or

(4) The class I or class II substance is being transferred between two wholly-owned subsidiaries of the same holding company.

* * * * *

(m) No person may sell or distribute, or offer for sale or distribution, any class I or class II substance for use as a refrigerant to any person unless:

(1) The buyer has been certified as a Type I, Type II, Type III, or Universal technician pursuant to § 82.161;

(2) The buyer has completed a voluntary certification program requesting approval under § 82.161(g) by December 9, 1994. This paragraph expires on May 15, 1995.

(3) The buyer has been certified pursuant to 40 CFR part 82, subpart B and the refrigerant is either CFC–12 or an approved substitute consisting wholly or in part of a class I or class II substance for use in motor vehicle air conditioners pursuant to 40 CFR part 82, subpart G;

(4) The refrigerant is sold only for eventual resale to certified technicians or to appliance manufacturers (e.g., sold by a manufacturer to a wholesaler, sold by a technician to a reclaimer);

(5) The refrigerant is sold to an appliance manufacturer;

(6) The refrigerant is contained in an appliance, and after January 9, 1995, the refrigerant is contained in an appliance with a fully assembled refrigerant circuit;

(7) The refrigerant is charged into an appliance by a certified technician or an apprentice during maintenance, service, or repair; or

(8) The refrigerant is charged into an appliance by a technician who successfully completed a voluntary certification program requesting approval under § 82.161(g) by December 9, 1994. This paragraph (m)(8) expires on May 15, 1995.

(9) Rules stayed for reconsideration. Notwithstanding any other provisions of this subpart, the effectiveness of 40 CFR 82.154(m), only as it applies to refrigerant contained in appliances without fully assembled refrigerant circuits, is stayed from April 27, 1995

[until EPA takes final action on its reconsideration of these provisions. EPA will publish any such final action in the Federal Register].

* * * * *

4. Section 82.156 is amended by revising paragraph (a)(2)(i)(B) to read as follows:

**§ 82.156 Required practices.**

(a) * * *

(2) * * *

(i) * * *

(B) Be pressurized to 0 psig before it is opened if it is a low-pressure appliance and cover openings when isolation valves are present or when the openings can be capped during the service. Persons pressurizing low-pressure appliances that use refrigerants with boiling points at or below 85 degrees Fahrenheit at 29.9 inches of mercury (standard atmospheric pressure), (e.g., CFC–11 and HCFC–123), must not use methods such as nitrogen, that require subsequent purging. Persons pressurizing low-pressure appliances that use refrigerants with boiling points above 85 degrees Fahrenheit at 29.9 inches of mercury, e.g., CFC–113, must use heat to raise the internal pressure of the appliance as much as possible, but may use nitrogen to raise the internal pressure of the appliance from the level attainable through use of heat to atmospheric pressure; or

* * * * *

5. Section 82.158(b)(1) is amended by removing the phrase ''ARI Standard 740–1993, Performance of Refrigerant Recovery, Recycling and/or Reclaim Equipment (ARI 740–1993) (appendix B)'' and adding in its place ''appendix B'', by revising paragraph (b)(3), by removing paragraph (b)(4), by redesignating paragraphs (b)(5) and (b)(6) as paragraphs (b)(4) and (b)(5), and by adding paragraph (b)(6) to read as follows:

**§ 82.158 Standards for recycling and recovery equipment.**

* * * * *

(b) * * *

(3) The equipment must meet the ''General Equipment Requirements'' in Section 4 of appendix B.

* * * * *

(6) Effective [90 days after publication of the final rule], equipment that is advertised or marketed as ''recycling equipment'' must be capable of cleaning the standard contaminated refrigerant sample of appendix B, Section 5, to the levels in the following table when tested under the conditions of appendix B.

MAXIMUM CONTAMINANT LEVELS OF RECYCLED REFRIGERANTS IN SAME OWNER'S EQUIPMENT

| Contaminants | Low pressure systems | R–12 systems | All other systems |
|---|---|---|---|
| Acid Content (by wt.) | 1.0 PPM | 1.0 PPM | 1.0 PPM |

MAXIMUM CONTAMINANT LEVELS OF RECYCLED REFRIGERANTS IN SAME OWNER'S EQUIPMENT—Continued

| Contaminants | Low pressure systems | R–12 systems | All other systems |
|---|---|---|---|
| Moisture (by wt.) | 20 PPM | 10 PPM | 20 PPM |
| Non Condensable Gas (by vol.) | N/A | 2.0% | 2.0% |
| High Boiling Residues (by vol.) | 1.0% | 0.02% | 0.02% |
| Chlorides by Silver Nitrate Test | No turbidity | No turbidity. | No turbidity. |
| Particulates | Visually clean | Visually clean | Visually clean. |
| Other Refrigerants | 2.0% | 2.0% | 2.0% |

6. Section 82.164 is amended by revising the heading and paragraphs (a), (b), and by removing paragraphs (c), (d), (e), (f) and (g) to read as follows:

**§ 82.164 Reclaimer certification programs.**

* * * * *

(a) Effective persons reclaiming used refrigerant for sale to a new owner must either:

(1) Be a reclaimer certified by an EPA-approved reclaimer certification program in accordance with this section and the requirements specified in § 82.165;

(2) In cases where the custody and control of the refrigerant charge is maintained, have a representative sample of that refrigerant from each container tested by a laboratory certified by an EPA-approved laboratory certification program in accordance with § 82.167 to ensure that the refrigerant has been reclaimed to at least ARI Standard 700–1995; or

(3) As permitted in paragraphs (a)(1) and (2) of this section.

(1) Reclaimers certified by EPA prior to [30 Days From the Date of Publication of the final rule] may continue to reclaim used refrigerant for sale to a new owner until six months from the date EPA approves at least one reclaimer certification program.

(2) Reclaimers certified by EPA prior to [30 Days From the Date of Publication of the final rule] may not reclaim used refrigeration for sale to a new owner six months after the date EPA approves at least one reclaimer certification program, unless the reclaimer has been certified by an EPA-approved reclaimer certification program, approved in accordance with this section.

(b) Any person seeking approval as a reclaimer certification program may apply for approval by the Administrator. The application must be sent to: Section 608 Recycling Program Manager, Reclaimer Certification, Stratospheric Protection Division, 6205J, U.S. Environmental Protection Agency, 401 M Street, SW., Washington, DC 20460. Applications for approval must include written information verifying the ability of the reclaimer certification program to ensure that reclaimers it certifies meet the criteria listed in this section and in § 82.165.

(1) Reclaimer certification programs must demonstrate to EPA the ability to perform oversight and verification to provide reasonable assurance that the certified reclaimers will reclaim used refrigerant for sale to a new owner to at least ARI Standard 700–1995 in accordance with this section.

(2) Reclaimer certification programs must demonstrate to EPA the ability to perform all recordkeeping and reporting requirements listed in § 82.166(g), (h) and (s) and verify that all persons seeking to become and remain certified reclaimers meet the criteria set forth in § 82.165.

(3) Reclaimer certification programs must maintain and effectively distribute a list of names and addresses of all reclaimers certified by the reclaimer certification program.

(4) Reclaimer certification programs must create, distribute, and control the use of a seal, logo, or other like notification, indicating that an approved reclaimer certification program has certified the reclaimer. The seal, logo, or other like notification must contain the following standardized language: ''_____ has been certified as a refrigerant reclaimer required by 40 CFR part 82, subpart F.'' The certified reclaimer must display this notification conspicuously.

(5) Reclaimer certification programs must decertify a program where a pattern of violations occurs. The method of revoking certification of the particular reclaimer must be reasonable (such as including a provision for appeal) and conducted in a timely manner.

(6) Reclaimer certification programs must submit to EPA, in accordance with § 82.166(h), information concerning the quantity of material sent for reclamation, the mass of refrigerant reclaimed, and the mass of waste products.

(7) Reclaimer certification programs must demonstrate that certificates or other information indicating the certification of a reclaimer will not be transferable. In the event of a change in ownership of a certified reclaimer the new owner of the entity shall notify the reclaimer certification program within 30 days of the change of ownership.

(8) Failure to abide by any of the provisions of this subpart may result in the revocation or suspension of the approval of the reclaimer certification program. In such cases, the Administrator or her or his designated representative shall give notice to the organization setting forth the basis for her or his determination and comply with the procedures contained in § 82.169.

6a. Section 82.165 is added to read as follows:

**§ 82.165 Reclaimer certification criteria.**

(a) Persons seeking to become certified reclaimers must be certified by an EPA-approved reclaimer certification program in accordance with § 82.164. Persons seeking to become certified reclaimers will be required to demonstrate the ability to meet the criteria set forth in paragraphs (b), (c), and (d) of this section.

(b) Certified reclaimers must submit monthly processing reports to the approved certification program. These processing reports must include, but are not limited to, the amount of reclaimed refrigerant each certified reclaimer has processed during the preceding month. The reclaimer certification program will examine the data received by the reclaimers to ensure completeness.

(c) Reclaimers seeking to become certified must submit to the reclaimer certification programs at least three samples of reclaimed refrigerant. The reclamation certification program or a designated laboratory must chemically analyze three samples of refrigerant processed by each of the reclaimer's facilities prior to certifying the reclaimer. Each calendar year the reclaimer certification program must receive and chemically analyze at least four representative samples of refrigerant processed by each of the reclaimer's facilities. These tests must be performed on a random basis.

(d) Reclaimers must submit and update an accurate list of all equipment used to reprocess and analyze used refrigerant to the reclamation certification program. Reclaimer

certification programs must maintain a list of equipment used to reprocess and to analyze the used refrigerant by each reclaimer certified by that reclaimer certification program.

(e) Reclaimers certified by a reclaimer certification program that has its certification revoked in accordance with § 82.164(b)(7) must be recertified by another EPA-approved certification program within six months of receiving notification of the revocation.

(f) Reclaimers certified by a reclaimer certification program must release no more than 1.5 percent of the refrigerant during the reclamation process and dispose of wastes from the reclamation process in accordance with all applicable laws and regulations.

7. Section 82.166 is amended by revising paragraph (g) and adding paragraphs (r), (s), and (t) to read as follows:

**§ 82.166 Reporting and recordkeeping requirements.**

* * * * *

(g) Reclaimer certification programs must maintain records of the quantity of material sent to them for reclamation, the mass of refrigerant reclaimed, and the mass of waste products. Reclaimer certification programs must report this information to the Administrator annually within 30 days of the end of the calendar year.

* * * * *

(r) Laboratory certification programs must maintain records of the quantity of material sent to them for purity testing, the mass of refrigerant tested, mass of waste products and information indicating the amount of the total charge of used refrigerant that the representative sample received and analyzed by the certified laboratories was drawn from. Laboratory certification programs must report this information to the Administrator annually within 30 days of the end of the calendar year.

(s) Reclaimer certification programs must maintain a list of equipment used to reprocess and to analyze the refrigerant used by each reclaimer certified by the reclaimer certification program. Reclaimer certification programs must maintain a list of names and addresses of all reclaimers certified by the reclaimer certification program.

(t) Any contractor or technician reclaiming refrigerant consistent with the definition of contractor reclamation must keep records indicating that the custody and control of the refrigerant has been maintained. Records must include the quantity of refrigerant, the date and location of where the refrigerant was recovered, the date(s) and location(s) of where the refrigerant is stored, the date(s) and location(s) of where representative samples are drawn, and the date(s) and location(s) of where the refrigerant is sold after a certified laboratory has verified the quality of the refrigerant.

8. Section 82.167 is added to subpart F to read as follows:

**§ 82.167 Laboratory certification.**

(a) Any laboratory certification program may apply for approval by the Administrator to certify laboratories. The application must be sent to: Section 608 Recycling Program Manager, Laboratory Certification, Stratospheric Protection Division, 6205J, U.S. Environmental Protection Agency, 401 M Street, SW., Washington, DC 20460. Applications for approval must include written information verifying the ability of the laboratory certification program to ensure that laboratories it certifies meet the criteria listed in paragraphs (b), (c), (d), (e), (f), (g), (h), (i), (j), (k), and (l) of this section and § 82.168.

(b) Laboratory certification programs must demonstrate to EPA the ability to perform oversight and analysis to ensure that the certified laboratories will test representative samples of used refrigerant for sale to a new owner to at least ARI Standard 700–1995 in accordance with this section.

(c) Laboratory certification programs must demonstrate to EPA the ability to perform all recordkeeping and reporting requirements listed in § 82.166(r) and (t) and to verify that all persons seeking to become and remain certified laboratories meet the criteria set forth in § 82.168.

(d) Laboratory certification programs must maintain information concerning a certified laboratory's ability to test refrigerant purity levels acceptable under the ARI 700–1995 standard and a commitment to comply with the standards established by the EPA-approved certifier.

(e) Laboratory certification programs must test verify at least three refrigerants submitted by a potentially certified laboratory prior to the issuance of certification. Only laboratories that accurately determine within an acceptable range each contaminant in any of the qualifying samples will be certified. The following list of values constitutes acceptable ranges for reporting contaminants:

(1) Refrigerant purity: +/−0.01%;

(2) Water: +/-the greater of 3ppm or 10% of the actual value;

(3) High Boiling Residue: +/−the greater of 0.01% (absolute) or 20% of the actual value; and

(4) Non-condensibles: +/−the greater of 0.2% (absolute) or 10% of the actual value.

(f) Laboratory certification programs must perform a site visit prior to certifying the laboratory to ensure that the laboratory has the capability of performing correct refrigerant analysis and that the laboratory did analyze samples submitted for verification. Site visits must include a visual inspection of the laboratory's equipment and ascertain whether each item necessary for routine refrigerant analysis exists and is functional. In addition, the site visit must include a procedural review of the laboratory's methods and procedures for refrigerant analysis.

(g) Laboratory certification programs must develop and perform a schedule of continued site visits to ensure the continued qualifications of the laboratory. These visits will be consistent with the requirements in § 82.168(c). Site visits must occur on at least a quarterly basis.

(h) Laboratory certification programs must require, receive, and consolidate monthly processing reports submitted from the certified laboratories. These processing reports must include, but are not limited to, the amount of used refrigerant tested during the preceding month and the total amount of used refrigerant the tested amount represents. The laboratory certification program will examine the data received by the laboratories for completeness and accuracy.

(i) Laboratory certification programs must submit to EPA in accordance with § 82.166(r) information concerning the quantity of material sent for testing, the mass of refrigerant tested, the mass of waste products, and the total amount of used refrigerant that has had its purity verified in this manner.

(j) Laboratory certification programs must create, distribute, and control the use of a seal, logo, or other like notification, indicating that an approved laboratory certification program has certified the laboratory. EPA anticipates that a seal or logo will be necessary. The seal, logo, or like notification must contain the following statement: ''_____ has been certified as a certified laboratory to analyze refrigerant as required by 40 CFR part 82, subpart F.'' The laboratory certification program must require the display of this notification conspicuously.

(k) Only laboratories that are able to substantiate their ability to comply with the criteria established in this subsection may be certified. A certified laboratory no longer able to meet the continuing criteria must be decertified.

If such a case occurs, EPA must be notified within 30 days.

(l) Failure to abide by any of the provisions of this subpart may result in the revocation or suspension of the approval of the laboratory certification program. In such cases, the Administrator or her or his designated representative shall give notice to the organization setting forth the basis for her or his determination and identifying the procedures contained in § 82.169.

9. Section 82.168 is added to subpart F to reads as follows:

**§ 82.168 Laboratory certification criteria.**

(a) Persons seeking to have their laboratories certified must be certified by a laboratory certification program approved in accordance with § 82.167. Persons seeking to have their laboratories certified will be required to demonstrate to the laboratory certification program the ability to meet the criteria set forth in this section.

(b) Persons seeking to have their laboratories certified must submit to a laboratory certification program for the purposes of test verification at least three refrigerants prior to the issuance of certification. Only laboratories that accurately determine, within an acceptable range, each contaminant in any of the qualifying samples will be certified. The following lists of values constitute acceptable ranges for reporting contaminants:

(1) Refrigerant purity: +/−0.01%;

(2) Water: +/−the greater of 3ppm or 10% of the actual value;

(3) High Boiling Residue: +/−the greater of 0.01% (absolute) or 20% of the actual value; and

(4) Non-condensibles: +/−the greater of 0.2% (absolute) or 10% of the actual value.

(c) Persons seeking to have their laboratories certified must permit a site visit by a laboratory certification program prior to becoming certified for the purposes of ensuring that the laboratory has the capability of performing correct refrigerant analysis and that the laboratory did analyze samples submitted for verification. Site visits must include a visual inspection of the laboratory's equipment tod ascertain whether each item necessary for compliance exists and is functional for routine refrigerant analysis. In addition, the site visit must include a procedural review of the laboratory's methods and procedures for refrigerant analysis.

(d) Certified laboratories must permit a schedule of continued site visits to ensure the continued qualifications of the laboratory. These visits will be consistent with the requirements in paragraph (c) of this section. Site visits must occur on at least a quarterly basis.

(e) Certified laboratories must submit monthly processing reports to the laboratory certification program. These processing reports must include, but are not limited to, the amount of used refrigerant tested during the preceding month and the total amount of used refrigerant the tested amount represents. The laboratory certification program will examine the data received by the laboratories to ensure completeness and accuracy.

(f) Laboratories certified by a laboratory certification program for which certification has been revoked in accordance with § 82.167(l) must be recertified by another EPA-approved certification program within six months of receiving notification of the revocation.

10. Section 82.169 is added to subpart F to read as follows:

**§ 82.169 Suspension and revocation procedures.**

(a) Failure to abide by any of the provisions of this subpart may result in the revocation or suspension of the approval to certify technicians, laboratories, reclaimers and/or recycling and recovery equipment. In such cases, the Administrator or her or his designated representative shall give notice to the organization setting forth the basis for her or his determination.

(b) The revoked or suspended certification program that chooses to request a hearing must file that request in writing within 30 days of the date of the Agency's decision at the address listed in § 82.160 and shall set forth the certification program's objections to the Agency's decision and data to support the objections.

(c) If, after review of the request and supporting data, the Administrator or her or his designated representative finds that the request raises a substantial and factual issue, she or he shall provide the certification program with a hearing.

(d) After granting a request for a hearing the Administrator or her or his designated representative shall designate a Presiding Officer for the hearing.

(e) The hearing shall be held as soon as practicable at a time and place determined by the Administrator, the designated representative, or by the Presiding Officer.

(f) The Administrator or her or his designated representative may, at his or her discretion, direct that all argument and presentation of evidence be concluded within a specified period established by the Administrator or her or his designated representative. Said period may be no less than 30 days from the date that the first written offer of a hearing is made to the laboratory certification program. To expedite proceedings, the Administrator or her or his designated representative may direct that the decision of the Presiding Officer (who may, but need not, be the Administrator) shall be the final EPA decision.

(g) Upon appointment pursuant to paragraph (d) of this section, the Presiding Officer will establish a hearing file. The file shall consist of the following:

(1) The determination issued by the Administrator under § 82.165;

(2) The request for a hearing and the supporting data submitted therewith;

(3) All documents relating to the request for certification and all documents submitted therewith; and

(4) Correspondence and other data material to the hearing.

(h) The hearing file will be available for inspection by the applicant at the office of the Presiding Officer.

(i) An applicant may appear in person or may be represented by counsel or by any other duly authorized representative.

(j) The Presiding Officer, upon the request of any party or at his or her discretion, may arrange for a pre-hearing conference at a time and place he/she specifies. Such pre-hearing conference will consider the following:

(1) Simplification of the issues;

(2) Stipulations, admissions of fact, and the introduction of documents;

(3) Limitation of the number of expert witnesses;

(4) Possibility of agreement disposing of any or all of the issues in dispute; and

(5) Such other matters as may aid in the disposition of the hearing, including such additional tests as may be agreed upon by the parties.

(k) The results of the conference shall be reduced to writing by the Presiding Officer and made part of the record.

(l) Hearings shall be conducted by the Presiding Officer in an informal but orderly and expeditious manner. The parties may offer oral or written evidence, subject to the exclusion by the Presiding Officer of irrelevant, immaterial, and repetitious evidence.

(m) Witnesses will not be required to testify under oath. However, the Presiding Officer shall call to the attention of witnesses that their statements may be subject to the provisions of 18 U.S.C. 1001 which imposes penalties for knowingly making false statements or representations or using false documents in any matter within the jurisdiction of any

department or agency of the United States.

(n) Any witness may be examined or cross-examined by the Presiding Officer, the parties, or their representatives.

(o) Hearings shall be reported verbatim. Copies of transcripts of proceedings may be purchased by the applicant from the reporter.

(p) All written statements, charts, tabulations, and similar data offered in evidence at the hearings shall, upon a showing satisfactory to the Presiding Officer of their authenticity, relevancy, and materiality, be received in evidence and shall constitute a part of the record.

(q) Oral argument may be permitted at the discretion of the Presiding Officer and shall be reported as part of the record unless otherwise ordered by the Presiding Officer.

(r) The Presiding Officer shall make an initial decision which shall include written findings and conclusions and the reasons or basis regarding all the material issues of fact, law, or discretion presented on the record. The findings, conclusions, and written decision shall be provided to the parties and made a part of the record. The initial decision shall become the decision of the Administrator without further proceedings, unless there is an appeal to the Administrator or motion for review by the Administrator within 20 days of the date the initial decision was filed.

(s) On appeal from or review of the initial decision, the Administrator or her or his designated representative shall have all the powers which he or she would have in making the initial decision, including the discretion to require or allow briefs, oral argument, the taking of additional evidence, or the remanding to the Presiding Officer for additional proceedings. The decision by the Administrator or her or his representative designate shall include written findings and conclusions and the reasons or basis therefore on all the material issues of fact, law, or discretion presented on the appeal or considered in the review.

11. Appendix B to subpart F is revised to read as follows:

## Appendix B to Subpart F—Performance of Refrigerant Recovery, Recycling, and/or Reclaim Equipment

This appendix is based on Air-Conditioning and Refrigeration Institute Standard 740–1995.

Refrigerant Recovery/Recycling Equipment

Section 1. Purpose

1.1 *Purpose.* The purpose of this standard is to establish methods of testing for rating and evaluating the performance of refrigerant recovery, and/or recycling equipment and general equipment requirements (herein referred to as ''equipment'') for contaminant or purity levels, capacity, speed and purge loss to minimize emission into the atmosphere of designated refrigerants.

Section 2. Scope

2.1 *Scope.* This standard applies to equipment for recovering and/or recycling single refrigerants, azeotropics, zeotropic blends, and their normal contaminants from refrigerant systems. This standard defines the test apparatus, test gas mixtures, sampling procedures and analytical techniques that will be used to determine the performance of refrigerant recovery and/or recycling equipment (hereinafter, ''equipment'').

2.1.2 Refrigerants used to evaluate equipment shall be pure halogenated hydrocarbons, azeotropes and blends containing halogenated hydrocarbons.

Section 3. Definitions

*Definitions.* All terms in this Appendix will follow the definitions in § 82.152 unless otherwise defined in this Appendix.

*Clearing Refrigerant.* Procedures used to remove trapped refrigerant from equipment before switching from one refrigerant to another.

*High Temperature Vapor Recovery Rate.* For equipment having at least one designated refrigerant (see 11.2) with a boiling point in the range of −50 to +10°C, the rate will be measured for R–22, or the lowest boiling point refrigerant if R–22 is not a designated refrigerant.

*Published Ratings.* A statement of the assigned values of those performance characteristics, under stated rating conditions, by which a unit may be chosen to fit its application. These values apply to all units of like nominal size and type (identification) produced by the same manufacturer. As used herein, the term ''published rating'' includes the rating of all performance characteristics shown on the unit or published in specifications, advertising or other literature controlled by the manufacturer, at stated rating conditions.

*Push/Pull Method.* The push/pull refrigerant recovery method is defined as the process of transferring liquid refrigerant from a refrigeration system to a receiving vessel by lowering the pressure in the vessel and raising the pressure in the system, and by connecting a separate line between the system liquid port and the receiving vessel.

*Recycle Flow Rate.* The amount of refrigerant processed divided by the time elapsed in the recycling mode. For equipment which uses a separate recycling sequence, the recycle rate does not include the recovery rate (or elapsed time). For equipment which does not use a separate recycling sequence, the recycle rate is a rate based soley on the higher of the liquid or vapor recovery rate, by which the contaminant levels were measured.

*Residual Trapped Refrigerant.* Refrigerant remaining in equipment after clearing.

*''Shall,'' ''Should,'' ''Recommended'' or ''It is Recommended.''* ''Shall,'' ''should,'' ''recommended'' or ''it is recommended'' shall be interpreted as follows:

*Shall.* Where ''shall'' or ''shall not'' is used for a provision specified, that provision is mandatory if compliance with the standard is claimed.

*Should, Recommended or It is Recommended.* ''Should,'' ''recommended'' or ''it is recommended'' is used to indicate provisions which are not mandatory but which are desirable as good practice.

*Standard Contaminated Refrigerant Sample.* A mixture of new or reclaimed refrigerant and specified quantities of identified contaminants which constitute the mixture to be processed by the equipment under test. These contaminant levels are expected only from severe service conditions.

*Trapped Refrigerant.* The amount of refrigerant remaining in the equipment after the recovery or recovery/recycling operation but before clearing.

*Vapor Recovery Rate.* The average rate that refrigerant is withdrawn from the mixing chamber between two pressures as vapor recovery rate is changing pressure and temperature starting at saturated conditions either 24 °C or at the boiling point 100 kPa (abs), whichever is higher. The final pressure condition is 10% of the initial pressure, but not lower than the equipment final recovery vacuum and not higher than 100 kPa (abs).

Section 4. General Equipment Requirements

4.1 *Equipment Information.* The equipment manufacturer shall provide operating instructions, necessary maintenance procedures and source information for replacement parts and repair.

4.2 *Filter Replacement.* The equipment shall indicate when any filter/drier(s) needs replacement. This requirement can be met by use of a moisture transducer and indicator light, by use of a sight glass/moisture indicator or by some measurement of the amount of refrigerant processed such as a flow meter or hour meter. Written instructions such as ''to change the filter every 181 kg, or every 30 days'' shall not be acceptable except for equipment in large systems where the liquid recovery rate is greater than 11.3 kg/min where the filter/drier(s) would be changed for every job.

4.3 *Purge of Non-Condensable.* If non-condensables are purged, the equipment shall either automatically purge non-condensables or provide indicating means to guide the purge process.

4.4 *Purge Loss.* The total refrigerant loss due to purging non-condensables, draining oil and clearing refrigerant (see 9.5) shall be less than 3% (by weight) of total processed refrigerant.

4.5 *Permeation Rate.* High pressure hose assemblies 5/8 in. [16 mm] nomimal and smaller shall not exceed a permeation rate of 3.9 g/cm2/yr (internal surface) at a temperature of 48.8 °C. Hose assemblies UL recognized as having passed ANSI/UL 1963 requirements shall be accepted without testing. See 7.1.4.

4.6 *Clearing Trapped Refrigerant.* For equipment rated for more than one refrigerant, the manufacturer shall provide a method and instructions which will accomplish connections and clearing within 15 minutes. Special equipment, other than a vacuum pump or manifold gauge set shall be furnished. The clearing procedure shall not rely upon the storage cylinder below

saturated pressure conditions at ambient temperature.

4.7 *Temperature.* The equipment shall be evaluated at 24 °C with additional limited evaluation at 40 °C. Normal operating conditions range from 10 °C to 40 °C.

4.8 *Exemptions.* Equipment intended for recovery only shall be exempt from 4.2 and 4.3.

Section 5. Contaminated Refrigerants

5.1 *Sample Characteristics.* The standard contaminated refrigerant sample shall have the characteristics specified in Table 1, except as provided in 5.2.

5.2 *Recovery-Only Testing.* Recovery equipment not rated for any specific contaminant shall be tested with new or reclaimed refrigerant.

Section 6. Test Apparatus

6.1 *General Recommendations.* The recommended test apparatus is described in the following paragraphs. If alternate test apparatus are employed, the user shall be able to demonstrate that they produce results equivalent to the specified referee apparatus.

6.2 *Self-Contained Equipment Test Apparatus.* The apparatus, shown in Figure 1, shall consist of:

6.2.1 *Mixing Chamber.* A mixing chamber consisting of a tank with a conical-shaped bottom, a bottom port and piping for delivering refrigerant to the equipment, various ports and valves for adding refrigerant to the chamber and stirring means for mixing.

6.2.2 *Filling Storage Cylinder.* The storage cylinder to be filled by the refrigerant transferred shall be cleaned and at the pressure of the recovered refrigerant at the beginning of the test. It will not be filled over 80%, by volume.

6.2.3 *Vapor Feed.* Vapor refrigerant feed consisting of evaporator, control valves and piping to create a 3.0 °C superheat condition at an evaporating temperature of 21 °C2±K.

6.2.4 *Alternative Vapor Feed.* An alternative method for vapor feed shall be to pass the refrigerant through a boiler and then through an automatic pressure regulating valve set at different saturation pressures, moving from saturated pressure at 24 °C to final pressure of recovery.

6.2.5 *Liquid Feed.* Liquid refrigerant feed consisting of control valves, sampling port and piping.

6.2.6 *Instrumentation.* Instrumentation capable of measuring weight, temperature, pressure and refrigerant loss, as required.

**BILLING CODE 6560–50–P**

**Table 1. Standard Contaminated Refrigerant Samples**

| | R11 | R12 | R13 | R22 | R113 | R114 | R123 | R134a | R500 | R502 | R503 |
|---|---|---|---|---|---|---|---|---|---|---|---|
| Moisture Content: ppm by Weight of Pure Refrigerant | 100 | 80 | 30 | 200 | 100 | 85 | 200 | 200 | 200 | 200 | 30 |
| Particulate Content: ppm by Weight of Pure Refrigerant Characterized by[1] | 80 | 80 | NA | 80 | 80 | 80 | 80 | 80 | 80 | 80 | NA |
| Acid Content: ppm by Weight of Pure Refrigerant - (mg KOH per kg Refrig.) Characterized by[2] | 500 | 100 | NA | 500 | 400 | 200 | 500 | 100 | 100 | 100 | NA |
| Mineral Oil Content: % by Weight of Pure Refrigerant | 20 | 5 | NA | 5 | 20 | 20 | 20 | 5 | 5 | 5 | NA |
| Viscosity (SUS) | 300 | 150 | | 300 | 300 | 300 | 300 | 150[3] | 150 | 150 | |
| Non-Condensable Gases (Air Content): % by Volume | NA | 3 | 3 | 3 | NA | 3 | NA | 3 | 3 | 3 | 3 |

[1] Particulate content shall consist of inert materials and shall comply with particulate requirements in Appendix B.

[2] Acid consists of 60% oleic acid and 40% hydrochloric acid on a total number basis.

[3] Synthetic ester-based oil.

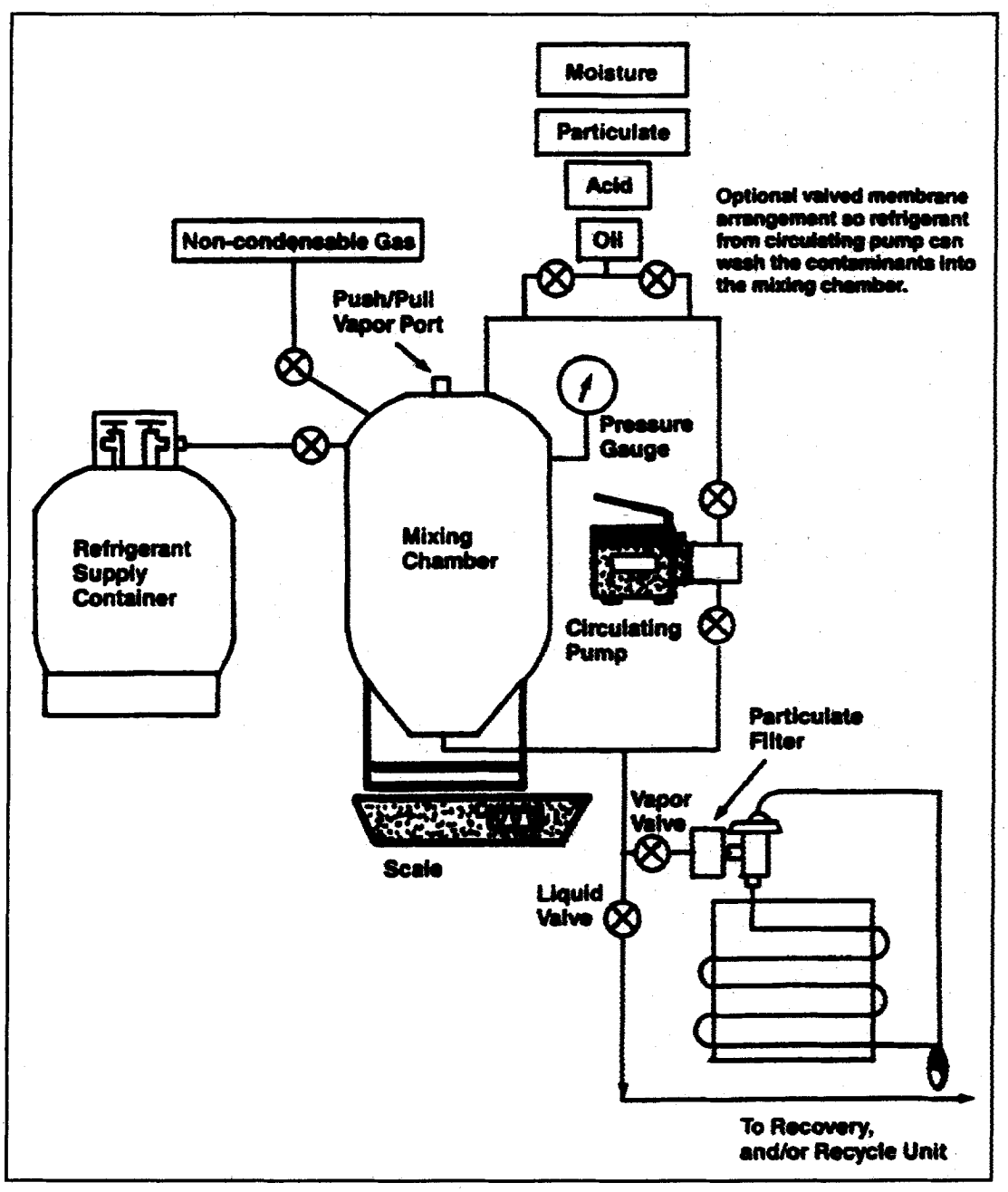


Figure 1. Test Apparatus for Self-Contained Equipment

BILLING CODE 6560–50–C

6.3 *Size.* The size of the mixing chamber shall be a minimum of .09 $m^3$. The bottom port and the refrigerant feed shall depend on the size of the equipment. Typically, the mixing valves and piping shall be 9.5 mm. For large equipment to be used on chillers, the minimum inside diameter of ports, valves and pipings shall be the smaller of the manufacturer's recommendation or 37 mm.

6.4 *System Dependent Equipment Test Apparatus.* This test apparatus is to be used for final recovery vacuum rating of all system dependent equipment.

6.4.1 *Test Setup.* The test apparatus shown in Figure 2 consists of a complete refrigeration system. The manufacturer shall identify the refrigerants to be tested. The test apparatus can be modified to facilitate operation or testing of the system dependent equipment if the modifications to the apparatus are specifically described within the manufacturer's literature. (See Figure 2.) A 6.3 mm balance line shall be connected across the test apparatus between the high and low pressure sides, with an isolation valve located at the connection to the compressor high side. A 6.3 mm access port with a valve core shall be located in the balance line for the purpose of measuring final recovery vacuum at the conclusion of the test.

Section 7. Performance Testing

7.1 *General Testing.*

7.1.1 *Temperatures.* Testing shall be conducted at an ambient temperature of 24EC ±1K except high temperature vapor recovery shall be at 40EC ±1K. The evaporator conditions of 6.2.3 shall be maintained as long as liquid refrigerant remains in the mixing chamber.

7.1.2 *Refrigerants.* The equipment shall be tested for all designated refrigerants (see 11.2). All tests in Section 7 shall be completed for each refrigerant before starting tests with the next refrigerant.

7.1.3 *Selected Tests.* Tests shall be as appropriate for the equipment type and ratings parameters selected (see 9.9, 11.1 and 11.2).

7.1.4 *Hose Assemblies.* For the purpose of limiting refrigerant emissions to the atmosphere, hose assemblies shall be tested for permeation according to ANSI/UL Standard 1963, Section 40.10.

7.2 *Equipment Preparation and Operation.* The equipment shall be prepared and operated per the operating instructions.

7.3 *Test Batch.* The test batch consisting of refrigerant sample (see Section 5) of the test refrigerant shall be prepared and thoroughly mixed. Continued mixing or stirring shall be required during the test while liquid refrigerant remains in the mixing chamber. The mixing chamber shall be filled to 80% level by volume.

7.3.1 *Control Test Batch.* Prior to starting the test for the first batch for each refrigerant, a liquid sample will be drawn from the mixing chamber and analyzed per Section 8 to assure that contaminant levels match Table 1 within ±10 ppm for moisture, ±20 ppm for particulate, ±20 ppm for oleic acid and ±0.5% for oil.

7.4 *Recovery Tests (Recovery and Recovery/Recycle Equipment).*

7.4.1 *Determining Recovery Rates.* The liquid and vapor refrigerant recovery rates shall be measured during the first test batch for each refrigerant (see 9.1, 9.2 and 9.4). Equipment preparation and recovery cylinder changeover shall not be included in elapsed time measurements for determining vapor recovery rate and liquid refrigerant recovery rate. Operations such as subcooling the recovery cylinder shall be included. Recovery cylinder shall be the same size as normally furnished by the equipment manufacturer. Oversized tanks shall not be permitted.

7.4.1.1 *Liquid Refrigerant Recovery Rate.* If elected, the recovery rate using the liquid refrigerant feed means (see 6.2.5) shall be determined. After the equipment reaches stabilized conditions of condensing temperature and/or recovery cylinder pressure, the recovery process shall be stopped and an initial weight shall be taken of the mixing chamber (see 9.2). The recovery process shall be continued for a period of time sufficient to achieve the accuracy in 9.4. The recovery process shall be stopped and a final weight shall be taken of the mixing chamber.

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**Configuration of standard air conditioning or refrigeration system for use as a test apparatus**

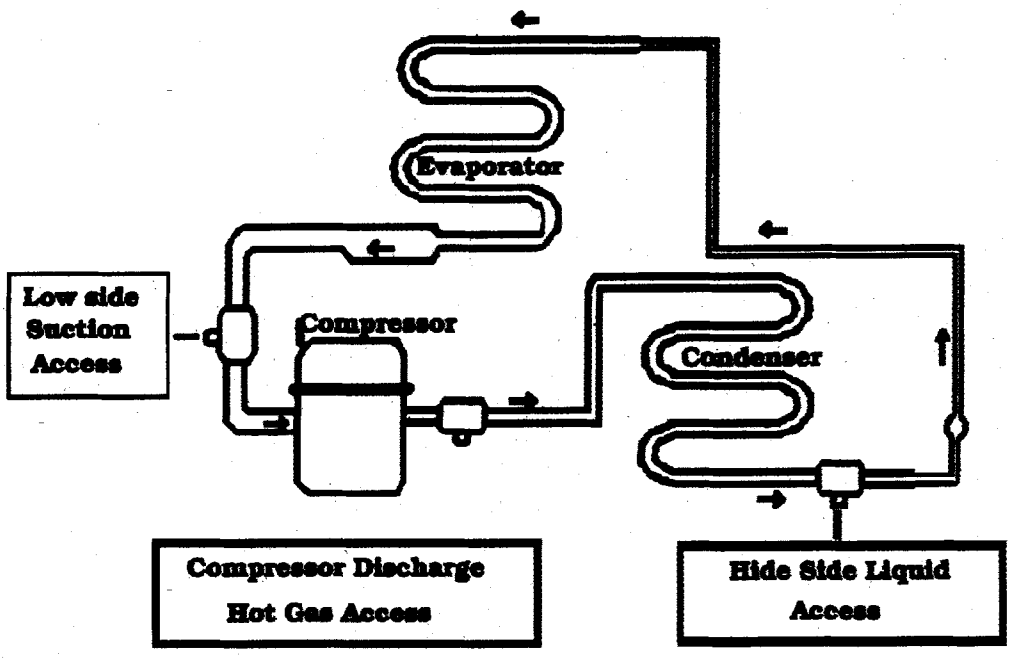


**Figure 2. System Dependent Equipment Test Apparatus**

BILLING CODE 6560–50–C

7.4.1.2 *Vapor Refrigerant Recovery Rate.* If elected, the average vapor flow rate shall be measured to accuracy requirements in clause 9.4 under conditions with no liquid refrigerant in the mixing chamber. The liquid recovery feed means shall be used. At initial conditions of saturated vapor at the higher of 24EC or the boiling temperature (100 kPa absolute pressure), the weight of the mixing chamber and the pressure shall be recorded. At final conditions representing pressure in the mixing chamber of 10% of the initial condition, but not less than the final recovery vacuum (see 9.6) nor more than 100 kPa, measure the weight of the mixing chamber and the elapsed time.

7.4.1.3 *High Temperature Vapor Recovery Rate.* Applicable for equipment having at least one designated refrigerant (see 11.2) with a boiling point between −50EC and +10EC. Measure the rate for R–22, or the refrigerant with the lowest boiling point if R–22 is not a designated refrigerant. Repeat the test in 7.4.1.2 at saturated conditions at 40EC and continue to operate equipment to assure it will achieve the final recovery vacuum (see 7.4.3).

7.4.2 *Recovery Operation.* This test is for determining the final recovery vacuum and the ability to remove contaminants as appropriate. If equipment is rated for liquid recovery (see 7.4.1.3), liquid recovery feed means described in 6.2.5 shall be used. If not, vapor recovery means described in 6.2.3 or 6.2.4 shall be used. Continue recovery operation until all liquid is removed from the test apparatus and vapor is removed to the point where equipment shuts down by automatic means or is manually shut off per operating instructions.

7.4.2.1 *Oil Draining.* Capture oil from the equipment at intervals as required in the instructions. Record the weight of the container. Completely remove refrigerant from oil by evacuation or other appropriate means. The weight difference shall be used in 9.5.2.

7.4.3 *Final Recovery Vacuum.* At the end of the first test batch for each refrigerant, the liquid valve and vapor valve of the apparatus shall be closed. After waiting 1 minute, the mixing chamber pressure shall be recorded (see 9.6).

7.4.4 *Residual Refrigerant.* This test will measure the mass of remaining refrigerant in the equipment after clearing and therefore the potential for mixing refrigerants (see 4.6).

7.4.4.1 *Initial Conditions.* At the end of the last test for each batch for each refrigerant, the equipment shall be disconnected from the test apparatus (Figure 1). Recycle per 7.5, if appropriate. Perform refrigerant clearing operations as called for in the instruction manual. Capture and record the weight of any refrigerant which would have been emitted to the atmosphere during the clearing process for use in 9.5. If two loops are used for recycling, trapped refrigerant shall be measured for both.

7.4.4.2 *Residual Trapped Refrigerant.* Evacuate an empty test cylinder to 1.0 kPa absolute. Record the empty weight of the test cylinder. Open all valves to the equipment so as to provide access to all trapped refrigerant. Connect the equipment to the test cylinder and operate valves to recover the residual refrigerant. Record the weight of the test cylinder using a recovery cylinder pressure no less than specified in 6.2.2. Place the test cylinder in liquid nitrogen for a period of 30 minutes or until a vacuum of 1000 microns is reached, whichever occurs first.

7.5 *Recycling Tests (Recovery/Recycle Equipment).*

7.5.1 *Recycling Operation.* As each recovery cylinder is filled in 7.4.2, recycle according to operating instructions. There will not necessarily be a separate recycling sequence. Note non-condensable purge measurement in 9.5.

7.5.1.1 *Recycle Flow Rate.* While recycling the first recovery cylinder for each refrigerant, determine the recycling flow rate by appropriate means (see 9.3) to achieve the accuracy required in 9.4.

7.5.2 *Non-Condensable Sample.* After completing 7.4.3, prepare a second test batch (7.3). Recover per 7.4.2 until the current recovery cylinder is filled to 80% level by volume. Recycle per 7.5.1. Mark this cylinder and set aside for taking the vapor sample. For equipment having both an internal tank of at least 3 kg refrigerant capacity and an external recovery cylinder, two recovery cylinders shall be marked and set aside. The first is the cylinder described above. The second cylinder is the final recovery cylinder after filling it to 80% level by volume and recycling.

7.5.3 *Liquid Sample for Analysis.* Repeat steps 7.3, 7.4.2 and 7.5.1 with further test batches until indication means in 4.2 show the filter/drier(s) need replacing.

7.5.3.1 *Multiple Pass.* For equipment with a separate recycling circuit (multiple pass), set aside the current cylinder and draw the liquid sample (see 7.4) from the previous cylinder.

7.5.3.2 *Single Pass.* For equipment with the single pass recycling circuit, draw the liquid sample (see 7.4) from the current cylinder.

7.6 *Measuring Refrigerant Loss.* Refrigerant loss due to non-condensables shall be determined by appropriate means (see 9.5.1). The loss could occur in 7.4.1, 7.4.2 and 7.5.1.

Section 8. Sampling and Chemical Analysis Methods

8.1 *Chemical Analysis.* Chemical analysis methods shall be specified in appropriate standards such as ARI 700–93 and Appendix-93 to ARI Standard 700. If alternate test methods are employed, the laboratory must be able to demonstrate that they produce results equivalent to the specified referee method.

8.2 *Refrigerant Sampling.*

8.2.1 *Water Content.* The water content in refrigerant shall be measured by the Karl Fischer Analytical Method or by the Karl Fischer Coulometric techniques. Report the moisture level in parts per million by weight.

8.2.2 *Chloride Ions.* Chloride ions shall be measured by turbidity tests. At this time, quantitative results have not been defined. Report chloride content as ''pass'' or ''fail.'' In the future, when quantitative results are possible, report chloride content as parts per million by weight.

8.2.3 *Acidity.* The acidity test uses the titration principle. Report the acidity in parts per million by weight (mg KOH/kg) of sample.

8.2.4 *High Boiling Residue.* High boiling residues shall use measurement of the volume of residue after evaporating a standard volume of refrigerant. Using weight measurement and converting to volumetric units is acceptable. Report high boiling residues as percent by volume.

8.2.5 *Particulates/Solids.* The particulates/solids measurement employs visual examination. Report results as ''pass'' or ''fail.''

8.2.6 *Non-condensables.* The level of contamination by non-condensable gases in the base refrigerant being recycled shall be determined by gas chromatography. Report results as percent by volume.

Section 9. Performance Calculation and Rating

9.1 *Vapor Refrigerant Recovery Rate.* This rate shall be measured by weight change of the mixing chamber divided by elapsed time (see 7.4.1.2). The units shall be kg/min and the accuracy shall be per 9.4.

9.1.1 *High Temperature Vapor Recovery Rate.*

9.2 *Liquid Refrigerant Recovery Rate.* This rate shall be measured by weight change of the mixing chamber divided by elapsed time (see 7.4.1.3). The units shall be kg/min and the accuracy shall be per 9.4.

9.3 *Recycle Flow Rate.* The recycle flow rate shall be as defined in 3.10, expressed in kg/min, and the accuracy shall be per 9.4.

9.3.1 For equipment using multi-pass recycling or a separate sequence, the recycle rate shall be determined by dividing the net weight W of the refrigerant to be recycled by the actual time T required to recycle. Any set-up or operator interruptions shall not be included in the time T.

9.3.2 If no separate recycling sequence is used, the recycle rate shall be the higher of the vapor refrigerant recovery rate or the liquid refrigerant recovery rate. The recycle rate shall match a process which leads to contaminant levels in 9.9. Specifically, a recovery rate determined from bypassing a contaminant removal device cannot be used as a recycle rate when the contaminant levels in 9.9 are determined by passing the refrigerant through the contaminant removal device.

9.4 *Accuracy of Flow Rates.* The accuracy of test measurements in 9.1, 9.2 and 9.3 shall be ±.008 kg/min or flow rates up to .42 kg/min and ±2.0% for flow rates larger than .42 kg/min. Ratings shall be expressed to the nearest .02 kg/min.

9.5 *Refrigerant Loss.* This calculation will be based upon the net loss of refrigerant which would have been eliminated in the non-condensable purge process (see 7.5.1), the oil draining process (see 7.4.2.1) and the refrigerant clearing process (see 7.4.4.1), all divided by the net refrigerant content of the test batches. The refrigerant loss shall not exceed 3% by weight.

9.5.1 *Non-Condensable Purge.* Evacuate an empty container to 2 kPa absolute. Record the empty weight of the container. Place the container in a dry ice bath. Connect the equipment purge connection to the container and operate purge according to operating instructions so as to capture the non-

condensables and lost refrigerant. Weigh the cylinder after the recycling is complete. Equivalent means are permissible.

9.5.2 *Oil Draining.* Refrigerant removed from the oil after draining shall be collected and measured in accordance with 7.4.2.1.

9.5.3 *Clearing Unit.* Refrigerant captured during the clearing process shall be measured in accordance with 7.4.4.1.

9.6 *Final Recovery Vacuum.* The final recovery vacuum shall be the mixing chamber pressure in 7.4.3 expressed in kPa. The accuracy of the measurement shall be within 0.33 kPa.

9.7 *Residual Trapped Refrigerant.* The amount of residual trapped refrigerant shall be the final weight minus the initial weight of the test cylinder in 7.4.4.2, expressed in kg. The accuracy shall be ±0.02 kg and reported to the nearest 0.05 kg.

9.8 *Quantity Recycled.* The amount of refrigerant processed before changing filters (see 7.5.3) shall be expressed in kg to an accuracy of ±1%.

9.9 *Contaminant Levels.* The contaminant levels remaining after testing shall be published as follows:

Moisture content, ppm by weight Chloride ions, pass/fail Acidity, ppm by weight High boiling residue, % (by volume) Particulates-solid, pass/fail (visual examination) Non-condensables, % (by volume)

9.10 *Minimum Data Requirements for Published Ratings.* Published ratings shall include all of the parameters as shown in Tables 2 and 3 for each refrigerant designated by the manufacturer.

Section 10. Tolerances

10.1 *Tolerances.* Performance related parameters shall not be less favorable than the published ratings.

Section 11. Marking and Nameplate Data

11.1 *Marking and Nameplate Data.* The nameplate shall display the manufacturer's name, model designation, type of equipment, designated refrigerants, capacities and electrical characteristics where applicable.

Recommended nameplate voltages for 60 Hertz systems shall include one or more of the utilization voltages shown in Table 1 of ARI Standard 110–90. Recommended nameplate voltages for 50 Hertz systems shall include one or more of the utilization voltages shown in Table 1 of IEC Standard Publication 38, IEC Standard Voltages.

11.2 *Data for Designated Refrigerants.* For each refrigerant designated, the manufacturer shall include all the following that are applicable per Table 2:

a. Liquid Recovery Rate
b. Vapor Recovery Rate
c. High Temperature Vapor Recovery Rate
d. Final Recovery Vacuum
e. Recycle Flow Rate
f. Residual Trapped Refrigerant
g. Quantity Recycled

Section 12. Voluntary Conformance

12.1 *Conformance.* While conformance with this standard is voluntary, conformance shall not be claimed or implied for products or equipment within its *Purpose* (Section 1) and *Scope* (Section 2) unless such claims meet all of the requirements of the standards.

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**Table 2. Performance**

| Parameter/Type of Equipment | Recovery | Recovery/ Recycle | Recycle | System Dependent Equipment |
|---|---|---|---|---|
| Liquid Refrigerant Recovery Rate | 1 | 1 | N/A | N/A |
| Vapor Refrigerant Recovery Rate | 1 | 1 | N/A | N/A |
| High Temp. Vapor Recovery Rate | 1 | 1 | N/A | N/A |
| Final Recovery Vacuum | x | x | N/A | x |
| Recycle Flow Rate | N/A | x | x | N/A |
| Refrigerant Loss | 3 | x | x | 3 |
| Residual Trapped Refrigerant | 2 | 2 | 2 | 2 |
| Quantity Recycled | N/A | x | x | N/A |

* For recovery equipment, these parameters are optional. If not rated use N/A, "not applicable."

x Mandatory rating.

1 For a recovery or recovery/recycle unit, one must rate either liquid refrigerant recovery rate or vapor refrigerant recovery rate or one can rate for both. If rating only the one, the other shall be indicated by N/A, "not applicable."

2 Mandatory rating for equipment tested for multiple refrigerants.

3 Mandatory rating if multiple refrigerants, oil separation or non-condensable purge are rated.

**Table 3. Contaminants**

| Contaminant/Type of Equipment | Recovery | Recovery/ Recycle | Recycle | System Dependent Equipment |
|---|---|---|---|---|
| Moisture Content | * | x | x | N/A |
| Chloride Ions | * | x | x | N/A |
| Acidity | * | x | x | N/A |
| High Boiling Residue | * | x | x | N/A |
| Particulates | * | x | x | N/A |
| Non-Condensables | * | x | x | N/A |

* For recovery equipment, these parameters are optional. If not rated, use N/A, "not applicable."

x Mandatory rating.

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Attachment 1 to Appendix B References

Listed here are all Standards, handbooks, and other publications essential to the formation and implementation of the standard. All references in this appendix are considered as part of this standard.

- ANSI/ULStandard 1963, Refrigerant Recovery/Recycling Equipment, First Edition, 1989, American National Standards Institute/Underwriters Laboratories, Inc.
- ARI Standard 110–90, Air-Conditioning and Refrigerating Equipment Nameplate Voltages, Air-Conditioning and Refrigeration Institute
- ARI Standard 700–93, Specifications for Fluorocarbon and Other Refrigerants, Air-Conditioning and Refrigeration Institute
- ASHRAE Terminology of Heating, Ventilation, Air Conditioning, Refrigeration, & Refrigeration, American Society of Heating, Refrigerating, and Air-Conditioning Engineers, Inc., 1991
- IEC Standard Publication 38, IEC Standard Voltages, International Electrotechnical Commission, 1983

Attachment 2 to Appendix B. Particulate Used in Standard Contaminated Refrigerant Sample

B1 *Particulate Specification.*

B1.1 The particulate material (pm) will be a blend of 50% coarse air cleaner dust as received, and 50% retained on a 200-mesh screen. The coarse air cleaner dust is available from: AC Spark Plug Division, General Motors Corporation, Flint, Michigan.

B1.2 *Preparation of Particulate Materials.* To prepare the blend of contaminant, first wet screen a quantity of coarse air cleaner dust on a 200-mesh screen (particle retention 74 pm).

This is done by placing a portion of the dust on a 200-mesh screen and running water through the screen while stirring the dust with the fingers. The fine contaminant particles passing through the screen are discarded. The +200-mesh particles collected on the screen are removed and dried for one hour at 110EC. The blend of standard contaminant is prepared by mixing 50% by weight of coarse air cleaner dust as received (after drying for one hour at 110EC) with 50% by weight of the +200-mesh screened dust.

B1.3 *Particle Size Analysis.* The coarse air cleaner dust as received and the blend used as the standard contaminant have the following approximate particle size analysis:

WT. % IN VARIOUS SIZE RANGES, PM

| Size range | As received | Blend |
|---|---|---|
| 0–5 | 12 | 6 |
| 5–10 | 12 | 6 |
| 10–20 | 14 | 7 |
| 20–40 | 23 | 11 |
| 40–80 | 30 | 32 |
| 80–200 | 9 | 38 |

12. Appendix D to Subpart F is amended by revising section g to read as follows:

Appendix D to Subpart F—Standards for Becoming a Certifying Program for Technician

* * * * *

g. Recordkeeping and Reporting Requirements

Certifying programs must maintain records for at least three years which include, but are not limited to, the names and addresses of all individuals taking the tests, the scores of all certification tests administered, and the dates and locations of all testing administered.

EPA must receive an activity report from all approved certifying programs by every January 30 and June 30, the first to be submitted following the first full six-month period for which the program has been approved by EPA. This report will include the pass/fail rate and testing schedules, This will allow the Agency to determine the relative progress and success of these programs. If the certifying program believes a test bank question needs to be modified, information about that question should also be included.

Approved certifying programs will receive a letter of approval from EPA. Each testing center must display a copy of that letter.

Approved technician certification programs that intend to stop providing the certification test must forward all records required by this Appendix, § 82.161 and § 82.166 to a program currently approved by EPA in accordance with this Appendix and with § 82.161.

Approved Technician Certification Programs that receive records of certified technicians from a program that no longer offers the certification test must inform EPA in writing at the address listed in § 82.160 within 30 of receiving these records.

* * * * *

[FR Doc. 96–4041 Filed 2–28–96; 8:45 am]

BILLING CODE 6560–50–P

Federal Register

Thursday
February 29, 1996

# Part III

# Department of Transportation

## Coast Guard

**33 CFR Parts 150 and 154**

**Response Plans for Marine Transportation-Related Facilities; Final Rule**

**DEPARTMENT OF TRANSPORTATION**

**Coast Guard**

**33 CFR Parts 150 and 154**

**[CGD 91–036]**

**RIN 2115–AD82**

## Response Plans for Marine Transportation-Related Facilities

**AGENCY:** Coast Guard, DOT.

**ACTION:** Final rule.

**SUMMARY:** The Coast Guard is adopting with some changes, as final, the interim final rule which establishes regulations requiring response plans for marine transportation-related (MTR) facilities including deepwater ports, certain Coast Guard regulated onshore facilities, marinas, tank trucks, and railroad tank cars. This final rule also adopts with some changes, as final, the interim final rule which establishes additional response plan requirements for facilities located in Prince William Sound, Alaska, permitted under the Trans-Alaska Pipeline Authorization Act (TAPAA). These regulations are mandated by the Federal Water Pollution Control Act (FWPCA), as amended by the Oil Pollution Act of 1990 (OPA 90). The purpose of requiring facility response plans is to enhance private sector planning and response capabilities to minimize the environmental impact of spilled oil.

**EFFECTIVE DATE:** May 29, 1996.

**ADDRESSES:** Unless otherwise indicated, documents referred to in this preamble are available for inspection or copying at the office of the Executive Secretary, Marine Safety Council (G–LRA/3406) (CGD 91–036), U.S. Coast Guard Headquarters, 2100 Second Street SW., room 3406, Washington, DC 20593–0001, between 8 a.m. and 3 p.m., Monday through Friday, except Federal holidays. The telephone number is (202) 267–1477.

**FOR FURTHER INFORMATION CONTACT:** LCDR Walter (Bud) Hunt, Response Division (G–MEP), (202) 267–0441. This telephone is equipped to record messages on a 24-hour basis.

**SUPPLEMENTARY INFORMATION:**

### Drafting Information

The principal persons involved in drafting this document are LT Cliff Thomas, Project Manager, Standards Evaluation Branch (G–MES–2), and Jacqueline Sullivan, Project Counsel, Office of Chief Counsel (G–LRA).

### Regulatory History

On March 11, 1992 the Coast Guard published an advance notice of proposed rulemaking (ANPRM) in the Federal Register (57 FR 8708) entitled ''Facility Response Plans.'' The ANPRM discussed the background, statutory requirements of section 311(j) of the FWPCA, and possible regulatory approaches. In addition, the ANPRM posed questions for public comment. The Coast Guard received 116 comments.

On June 19, 1992, the Coast Guard published a notice of proposed rulemaking (NPRM) on the related rulemaking project Vessel Response Plans (VRP) (57 FR 27514). The Coast Guard also gathered public input on the proposed VRP rule through the Oil Spill Response Plan Negotiated Rulemaking Committee. Twenty-six organizations and the Coast Guard were members of the Committee. To maintain consistency between the two regulations, this rule uses certain concepts developed in the VRP NPRM and negotiated rulemaking committee.

The Coast Guard released Navigation and Vessel Inspection Circular (NVIC) No. 7–92 on September 15, 1992. NVIC No. 7–92 provided immediate guidance to the marine industry for preparing facility response plans to meet the February 1993 deadline established by the Oil Pollution Act of 1990 (OPA 90).

On February 5, 1993, the Coast Guard published an Interim Final Rule (IFR) entitled ''Response Plans for Marine Transportation-Related Facilities'' in the Federal Register (58 FR 7330). The Coast Guard received 55 comments on the IFR. These comments were considered in developing this final rule.

### Background and Purpose

In response to several recent major oil spills, Congress passed the Oil Pollution Act of 1990 (OPA 90) (Pub. L. 101–380). OPA 90 amended section 311(j) of the Federal Water Pollution Control Act (FWPCA) (33 U.S.C. 1321(j)). It established requirements, and an implementation schedule, for facility response plans and periodic inspections of discharge-removal equipment.

As amended by OPA 90, section 311(j)(5) directs the President to issue regulations implementing the new FWPCA requirements for facility response plans. The President delegated this authority, in part, to the Secretary of Transportation (DOT) by Executive Order 12777 (3 CFR, 1991 Comp.; 56 FR 54757). The Secretary of Transportation, in 49 CFR 1.46(m) (57 FR 8581; March 11, 1992), further delegated, to the Commandant of the Coast Guard, the authority to regulate marine transportation-related (MTR) onshore facilities, and deepwater ports subject to the Deepwater Ports Act of 1974, as amended (33 U.S.C. 1501, *et seq.*). This rule addresses only MTR facilities that handle, store, or transport oil. Oil spill response plan regulations for vessels are the subject of a separate rulemaking project (CGD 91–034).

Section 311(a)(1) of the FWPCA defines oil as including, but not limited to, petroleum, fuel oil, sludge, oil refuse, and oil mixed with waste other than dredge spoils (33 U.S.C. 1321(a)(1)). While the most common oils are the various petroleum oils (e.g., crude oil, gasoline, diesel, etc.), non-petroleum oils such as animal fats (e.g., tallow, lard, etc.), vegetable oils (e.g., corn oil, sunflower seed oil, palm oil, etc.), and other non-petroleum oils, such as turpentine, are included within the ambit of this regulation when handled, stored or transported by an MTR facility.

A major objective of the OPA 90 amendments to the FWPCA was to create a national planning and response system. OPA 90 requires the President to develop nationwide criteria for determining those facilities which could reasonably be expected to cause substantial harm to the environment. The OPA 90 Conference Report (Report 101–653) states that the criteria should result in a broad requirement for facility owners or operators to prepare and submit response plans. Those facilities identified by the President are required to submit response plans.

Section 311(j)(5) of the FWPCA requires the preparation and submission of response plans from all onshore facilities that could reasonably be expected to cause either ''substantial'' or ''significant and substantial'' harm to the environment by discharging oil into or on the navigable waters, adjoining shorelines, or exclusive economic zone of the United States. Response plans must also be consistent with the National Oil and Hazardous Substances Pollution Contingency Plan (NCP) (40 CFR part 300) and applicable Area Contingency Plans (ACPs).

Section 311(j)(5) also requires that, in a facility response plan, an owner or operator identify and ensure by contract or other means approved by the President the availability of private personnel and equipment sufficient to remove, to the maximum extent practicable, a worst case discharge and to mitigate or prevent substantial threat of such a discharge.

Section 311(j)(5)(F) of the FWPCA allows the Coast Guard to authorize an MTR facility requiring plan approval to

operate for up to 2 years after a plan is submitted for approval. This provides an interim period in which the facility may continue to operate while the plan approval process is completed.

Section 5005 of OPA 90 establishes requirements for response plans for MTR facilities located in Prince William Sound, Alaska, which are permitted under the Trans-Alaska Pipeline Authorization Act (TAPAA) (43 U.S.C. 1651, *et seq.*). This section requires a higher level of preparedness for facilities in Prince William Sound in order to provide an even greater margin of safety.

Although OPA 90 requires response plans for oil or hazardous substance spills, section 4202(b)(4) establishes an implementation schedule only for oil spill response plans. Response plans for hazardous substance spills will be the subject of a separate rulemaking.

## Discussion of Comments and Changes

The Coast Guard received 55 comments on the IFR. The following discussion summarizes the comments and explains substantive changes made to the regulation in response to the comments. Comments are categorized by the specific section of the IFR to which they apply. In addition to these changes, editorial changes have been made to clarify the rule or standardize terminology. The following sections have changes which are purely editorial: §§ 154.1010, 154.1017, 154.1030, 154.1047, 154.1050, 154.1070, 154.1075, 154.1125, and appendix C, sections 1, 3, 4, 5, 7, and 8. The following sections were not changed: §§ 154.1028, 154.1029, 154.1041, 154.1057, 154.1115, 154.1130, 154.1135, 154.1140 and appendix C, sections 6 and 9 and Tables 1–5. For the convenience of the public, the Coast Guard has reprinted subparts F and G of part 154 in their entirety, including both changed and unchanged sections. Two new subparts H and I have also been added to part 154.

## General Comments

One comment argued that the regulations do not consider economic reasonableness, overstep the intent of Congress in their scope and essentially place the entire burden for cleanup on owners and operators of facilities. The Coast Guard disagrees. The primary intent of the response planning portions of OPA 90 was to require that facility owners or operators identify and ensure, by contract or other approved means, the availability of private personnel and equipment to remove a worst case discharge. The Coast Guard has considered the economic costs of this final rule and they are summarized in this preamble in the section entitled ''Assessment.''

*Regulatory consistency.* The Coast Guard received 16 comments urging regulatory consistency in the development of these regulations. All of these comments stated that there should be consistency with the other regulations issued under OPA 90. One of these comments also recommended the establishment of an interagency working group to identify which sections of rules should be consistent and work toward achieving that consistency. Another of these comments also urged that response plan requirements should be amended to resemble EPA's requirements more closely but that the Coast guard's requirements should have a much closer focus on emergency response. The Coast Guard, EPA, and other Federal agencies met repeatedly throughout the development of each agency's rules. This coordination has produced significant similarities between agencies issuing response plan rules. For example, the Coast Guard and EPA have adopted the same requirements with respect to planning volumes, amounts of response equipment, and the use of dispersants, and other similar new or unconventional spill mitigation techniques including mechanical dispersal.

*Public Participation.* Six comments addressed concerns of public participation in the process of this rulemaking. Four comments argued that the Coast Guard should have issued an NPRM instead of an IFR to facilitate public comment. The IFR was issued to meet OPA 90's deadline for implementing these oil pollution rules. Public comment to the IFR has been considered in the development of this final rule.

One comment argued that the IFR did not meet the requirements of OPA 90 for public input regarding the adequacy of the plans because it does not provide for notification of plan receipt by the Coast Guard; supplying copies of the plans to interested people; making copies of the plans available in a central location for public review; or allowing the public to appeal Coast Guard decisions on deficiencies or classification.

The Coast Guard concludes that there is no requirement contained in OPA 90 for the public to determine the adequacy of individual response plans from onshore or offshore facilities. Along with Federal, state, and local government representatives who are responsible for coordinating environmental issues and emergency response operations, the Coast Guard has encouraged Area Committees to include environmental groups, representatives from academia, and concerned citizens. The Coast Guard concludes that this is an appropriate method for private citizens to provide advice, guidance, and expertise to the Area Committee and will result in a coordinated community response to an oil discharge.

This same comment requested a public hearing and the establishment of a negotiated rulemaking committee for this regulation. The Coast Guard established an Oil Spill Response Plan Negotiated Rulemaking Committee (56 FR 58202, November 18, 1991). The Coast Guard used information in the final report provided by the Committee in the drafting of the VRP Rule (CGD 91–036) and this rule. The Coast Guard finds it unnecessary to conduct a separate negotiated rulemaking for the Facility Response Plan (FRP) rule.

*Clarification.* Two comments requested general clarification of the IFR. One comment stated that the regulations must be clarified in many respects to avoid differences of interpretation. The other comment was concerned with words in the regulations having different meanings from their accepted meanings. The Coast Guard recognizes these concerns and has strived for clarity in this final rule. For example, in this final rule, the Coast Guard has added definitions of the terms ''complex'', ''tier'', and ''fish and wildlife and sensitive environment''. It has also issued guidance to response plan reviewers to assure uniform understanding and enforcement of response plan requirements.

*Agency jurisdiction.* Two comments addressed the issue of jurisdictional conflicts between agencies. One comment asserted that there is an overlap in Coast Guard and Research and Special Programs Administration (RSPA) authority over pipelines. This comment argued that pipelines used only for transporting fuel between tanks and vessels were previously subject only to Coast Guard jurisdiction. However, this comment argues, new RSPA regulations now apply to all pipelines. This comment contended that such regulation conflicts with the delegation of authority in E.O. 12777 giving RSPA authority over non-MTR pipelines only.

Executive Order 12777 delegated to the Secretary of Transportation responsibility for the issuance of regulations requiring the owner or operator of a transportation-related onshore facility and deepwater ports to prepare and submit response plans. The Secretary delegated to the Commandant of the Coast Guard the responsibility for

the issuance of regulations requiring the owner or operator of a marine transportation-related onshore facility and deepwater ports to prepare and submit response plans. The Secretary delegated to the Administrator of RSPA the same authority for non-marine transportation-related pipelines. The Coast Guard finds that there is no conflict over jurisdiction.

*Section 150.129 Response Plans*

The Coast Guard received one comment on this section. The comment requested that the Coast Guard clarify the submission requirements for deepwater ports. Under the IFR, the Coast Guard determined that deepwater ports are significant and substantial harm facilities under § 154.1015 and, therefore, are required to submit a response plan for review and approval. The Coast Guard finds that the submission requirements are clear and, therefore, has made no changes to the final rule on the classification of deepwater ports.

*Section 154.106 Incorporation by Reference*

The Coast Guard received one comment on this section. The comment stressed that the Coast Guard should review the standard test methods developed by the American Society of Testing Materials (ASTM) that are incorporated by reference in this section as the standards are revised. The Coast Guard intends to review any revisions to these standards and will conduct appropriate rulemaking to revise this section if warranted by changes to these standards.

*Section 154.1010 Purpose*

The Coast Guard received several comments requesting clarification of this section. In response to these comments, the Coast Guard has revised this section to clarify the purpose of response plans.

*Section 154.1015 Applicability*

The Coast Guard received eight comments on this section of the IFR. Three comments argued that the classification of facilities should not be determined solely by the amount of oil that a facility is capable of transferring. The comments stated that other factors such as a facility's spill history, proximity to fish and wildlife and sensitive environments, presence of containment structures, and potential worst case discharge should be considered in the classification of facilities.

The IFR reflects the Coast Guard determination that all MTR facilities that transfer oil to or from a vessel with a capacity of 250 barrels or more could reasonably be expected to cause at least substantial harm to the environment, and that large fixed facilities and deepwater ports could reasonably be expected to cause significant and substantial harm to the environment in the case of an oil discharge. If a facility owner or operator believes that his or her facility should be reclassified from significant and substantial harm to substantial harm or excluded from the substantial harm category based on factors other than the facility's capacity for transferring oil, then under § 154.1075 the facility owner or operator is permitted to appeal the classification to the COTP and then to the District Commander, and then to the Commandant. There have been no changes in these provisions in the final rule.

Although the Coast Guard has not changed the final rule to reflect the consideration of factors other than the facility's type and its capacity for transferring oil in the classification of the facility, the Coast Guard has modified the threshold for the initial classification of significant and substantial harm facilities in the final rule, thereby decreasing the number of facilities which will be classified as significant and substantial harm facilities. The Coast Guard has identified several fixed MTR facilities which are segments of non-MTR facilities that have a total storage capacity of less than 42,000 gallons. The Environmental Protection Agency (EPA) has determined that such non-transportation related facilities with a storage capacity of less than 42,000 gallons associated with a MTR facility are not considered as substantial harm facilities. However, these MTR facilities are capable of transferring oil to or from a vessel with a capacity of 250 barrels or more. The Coast Guard has determined that these facilities could reasonably be expected to cause substantial harm to the environment. These facilities must still submit response plans; however, they are no longer classified as ''significant and substantial harm'' facilities. Paragraph (c)(1) of § 154.1015 has been amended to incorporate this change.

One comment suggested that facilities that transfer only oily water mixtures should be classified as substantial harm facilities. The Coast Guard disagrees. Although a facility may transfer only oil that is mixed with water, the facility may transfer enough oil to reasonably be expected to cause significant and substantial harm to the environment if a discharge were to occur.

Another comment stated that the Coast Guard should clarify that mobile facilities are the only facilities that are not classified as significant and substantial harm facilities. Under the IFR, mobile facilities are the only facilities which initially are classified only as substantial harm facilities; however, under § 154.1016, the COTP may determine that other facilities may reasonably be expected to cause substantial harm to the environment and may upgrade mobile MTR facilities to significant and substantial harm facilities. Additionally, the amended paragraph (c)(1) of § 154.1015 of the final rule, which modifies the threshold for significant and substantial harm facilities, has increased the number of facilities that will initially be classified only as substantial harm facilities.

One comment suggested that the Coast Guard provide guidance on how to determine whether a facility is part of a complex. A facility is part of a complex if the entire facility is regulated by more than one Federal agency under section 311(j) of the FWPCA. Most MTR facilities are part of a larger facility that has segments which are regulated by agencies such as EPA, RSPA or the Minerals Management Service (MMS). If a facility owner or operator is unable to determine whether his or her facility is part of a complex, he or she may request guidance from the COTP.

Two comments contended that the regulation should not apply to non-petroleum oils. One comment specifically stated that the regulation should not apply to facilities which handle animal and vegetable oils because these oils are not toxic to the environment. The Coast Guard disagrees. The response planning requirements of this regulation were developed to ensure that facility owners or operators are prepared to respond to an oil spill originating from their facility, regardless of the type of oil spilled. The Coast Guard recognizes that certain non-petroleum oils, including certain animal fats and vegetable oils, are non-toxic in the marine environment; however, lethal acute aquatic toxicity is not the sole factor considered in determining harm to the environment. A discharge of animal fats or vegetable oils may cause chronic effects for waterfowl and aquatic organisms. Proper response planning for a discharge of non-petroleum oils will have a significant effect in limiting harm to the environment. Therefore, facility owners or operators handling non-petroleum oils at their facility are required to prepare response plans under this regulation.

The Coast Guard has determined, based upon comments, that animal fats and vegetable oils, and other non-petroleum oils will be addressed separately from petroleum oils, and from one another, in the final rule. The final rule removes the response planning requirements for animal fats and vegetable oils, and other non-petroleum oils from § 154.1049 in the IFR and establishes two new subparts H and I, containing requirements for these oils. Subpart H contains requirements for animal fats and vegetable oils, while subpart I contains requirements for other non-petroleum oils. Although new subparts have been established for animal fats and vegetable oils, and other non-petroleum oils, the response planning requirements for these oils are not changed in the final rule.

One comment stated that a facility that is capable of transferring oil to or from a vessel with a capacity of 250 barrels or more, but that does not transfer to a vessel of this size should not be required to submit a response plan. Although the Coast Guard has not lowered the threshold for substantial harm facilities in the final rule, the revised final rule permits the COTP to downgrade a facility. The COTP is in the position to evaluate the individual situation of each facility under his or her jurisdiction with respect to operational history and other factors which would affect the facility's classification. The COTP may downgrade a facility's classification, acting either on his own or upon request of the facility's owner or operator, if he finds that such action is warranted.

*Section 154.1016 Facility Classification by COTP*

The Coast Guard received four comments on this section. One comment stated that the COTP should not be permitted to upgrade a facility based on the facility's proximity to areas of economic importance and environmental sensitivity. The comment contended that OPA 90 does not permit such an action. Another comment stated that a facility's spill history does not indicate that the facility is at greater risk for future spills and, therefore, spill history should not be considered in determining a facility's classification. The Coast Guard disagrees. OPA 90 permits the Coast Guard to require response plans for facilities that could reasonably be expected to cause substantial harm and significant and substantial harm to the environment. OPA 90 does not define these terms; therefore, the Coast Guard must determine the criteria used to distinguish these facilities. The Coast Guard has adopted EPA's term ''fish and wildlife and sensitive environments'' to refer to areas of environmental sensitivity. The Coast Guard has concluded that a facility's proximity to fish and wildlife and sensitive environments and its spill history are relevant factors in determining whether a facility could reasonably be expected to cause substantial harm or significant and substantial harm to the environment in the case of an oil discharge.

Two comments stated that a facility owner or operator should be permitted to appeal the COTP's decision to upgrade a facility. Under § 154.1075 of the IFR, a facility owner or operator is permitted to request the COTP to review the initial facility classification. The owner or operator may submit relevant data to the COTP to support his or her argument. If the owner or operator is dissatisfied with the COTP's decision, the owner or operator may appeal the decision to the District Commander. The decision of the District Commander may be appealed to the Commandant. This appeals provision is unchanged in the final rule.

Under the IFR, the COTP was permitted only to upgrade a facility's initial classification. Under the final rule, the COTP is permitted to upgrade or downgrade the facility's classification. Upon written request from the facility owner or operator to review the facility's classification, the COTP may downgrade a facility from significant and substantial harm to substantial harm or from substantial harm to a status in which it is exempt from the regulation. This provides the COTP with greater latitude to appropriately regulate his or her port area. This change has prompted the renaming of this section to ''Facility Classification by COTP'' in the final rule.

*Section 154.1017 Response Plan Submission Requirement*

The Coast Guard received many comments on this section of the IFR. Four comments requested the Coast Guard to clarify whether the FRP regulations apply to inactive facilities. Under § 154.100(a), the applicability section for part 154, facilities in caretaker status are exempt from the requirements of this part, with the exception of certain safety requirements set out in § 154.735.

Two comments stated that facility complexes should not be required to submit response plans to more than one Federal agency for approval. The comments further stated that all facilities that transfer oil over water should be regulated exclusively by the Coast Guard. The Coast Guard recognizes that submitting plans to several agencies for approval may have been burdensome for those facilities whose options necessitated submission of response plans to more than one Federal agency. The initial delegation under Executive Order 12777 to issue regulations and review and approve response plan to multiple Federal agencies reflected agency expertise in the regulated industries and the traditional jurisdiction of Federal agencies under section 311 of the FWPCA. This delegation provided each agency with the opportunity to review response plans and to ensure that the plans reflected industry practices and were in compliance with statutory requirements.

Today, virtually every facility required to submit response plans has already done so in compliance with the rules promulgated by the appropriate agency. It has become apparent that some response plans unnecessarily duplicate information contained in other plans. Federal agencies are interested in streamlining the response plan preparation and submission procedures to reduce significantly the burden when plan revision and resubmission is required. The Coast Guard believes that the ''One Plan'' or Integrated Contingency Planning concept has merit and discussions are ongoing between industry, the appropriate Federal agencies, and members of the National Response Team (NRT). The NRT is developing guidance for preparation of integrated response plans that will satisfy the regulatory requirements of various Federal agencies while avoiding unnecessary and confusing duplication of standard response procedures and organizational details. With the completion of guidance on Integrated Contingency Planning, the Coast Guard will accept plans developed in accordance with that guidance. The NRT is also examining the feasibility of vesting response plan review in the On Scene Coordinator. The NRT is discussing minimizing the number of Federal agencies involved in reviewing a response plan for those facilities that, due to their diverse nature, may have to prepare and submit a response plan to more than one Federal agency. The Coast Guard is committed to working with the NRT on these issues and working to minimize the regulatory burden on facilities that have marine transportation-related mode and non-transportation-related components.

*Section 154.1020 Definitions*

The Coast Guard received many comments on the definitions of the terms used in the IFR. Some comments suggested clarification of certain terms while others suggested the addition of terms. The following discussion addresses only those definitions or issues on which the Coast Guard received comment or made significant revisions.

*Adverse weather.* The Coast Guard received one comment on ''adverse weather'' which suggested that wind, tides, and the number of daylight hours be included as three additional environmental factors that contribute to adverse weather conditions for a spill response. The Coast Guard did not intend the listed conditions to be exclusive. To address this comment's concern, the Coast Guard is adding language to the definition of ''adverse weather'' to indicate that other relevant factors including wind, tides, etc., should also be taken into account when identifying response systems and equipment.

*Availability (of response resources).* The Coast Guard received one comment which requested that this term be defined. The comment stated that the definition should indicate that response organizations often have contracts with many facilities and, as a result, there may be instances where the contractor's obligations to one facility may limit its ability to arrive at the scene of an oil spill at another facility within the specified times. The Coast Guard recognizes that actual availability of response resources may be limited by unforeseeable events such as multiple, simultaneous oil spills. The Coast Guard stresses that the requirements are not performance standards. They are intended to be used to develop a plan for responding to a discharge of oil to the maximum extent practicable in the existing conditions. The Coast Guard recognizes that actual conditions may not permit the arrival of resources within the prescribed timelines. The Coast Guard concludes that there is no need to provide a definition.

*Complex.* The Coast Guard received one comment suggesting that it clarify the meaning of ''complex'' and that the Coast Guard definition be consistent with the definition in EPA regulations. A ''complex'' is composed of facilities regulated by two or more Federal agencies, and that are used, or intended to be used, to transfer oil to or from a vessel. A ''complex'' may include marine transportation-related portions and other non-marine transportation-related portions. The Coast Guard has included a definition that is consistent with the FWPCA and applicable EPA regulations.

*Consistency with EPA regulations.* Two comments stated that the definitions in the Coast Guard regulation should be consistent with those in the EPA regulation. Wherever relevant, the Coast Guard has consulted other agencies and their regulations to ensure that the Coast Guard's OPA 90 regulations do not conflict with those of other agencies. Occasionally, the Coast Guard's definitions diverge from similar definitions of other agencies. In those cases, the Coast Guard has examined the other agency regulations and decided upon a different approach for legal, policy, or technical reasons.

*Environmentally Sensitive Area.* The Coast Guard received one comment suggesting that it add a definition of the term ''environmentally sensitive area'' to be consistent with EPA regulations, the NCP, and OPA 90. The EPA has adopted the term ''fish and wildlife and sensitive environment.'' For consistency, the Coast Guard is adopting EPA's term and its definition. However, the Coast Guard is adding economically important areas to the EPA definition. OPA 90 requires that response plans be consistent with the applicable Area Contingency Plan (ACP). The ACPs are prepared by Area Committees composed of qualified personnel from Federal, State and local agencies. The Coast Guard has provided guidance to the Area Committees on the preparation of ACPs. Coastal ACPs have been prepared and are available for preparation of facility response plans. The Area Committees identify, and prioritize for protection, specific locations that fall under the category ''fish and wildlife and sensitive environments.'' The ACPs will be revised annually and will identify areas of economic importance. The completed fish and wildlife and sensitive environments plans will likely be geographic-specific annexes to the ACPs. The National Oceanic and Atmospheric Administration (NOAA) published a notice in the Federal Register on March 29, 1994 entitled ''Guidance for Facility and Vessel Response Plans Fish and Wildlife and Sensitive Environments.'' (59 FR 14714) NOAA's notice provides detailed guidance which facility and vessel owners may use to supplement the information contained in the applicable Coast Guard regulations. However, the ACP will still be used to make the final determination regarding fish and wildlife and sensitive environments.

*Full-scale.* The Coast Guard received five comments suggesting the addition of the term ''full scale'' in order to clarify certain requirements for spill drills. The comments proposed that the term mean maximum participation by all levels of a facility's response organization to test major portions of the plan with a high degree of realism and extensive involvement. The Coast Guard extensively revised § 154.1055 of subpart F to reflect concerns expressed by comments, as well as to bring the section into alignment with the vessel response plan final rule and the applicable EPA regulations. Section 154.1055 is now entitled ''Exercises'' and requires the owner or operator of a facility to conduct exercises that will test the entire response plan every 3 years. The requirements allow the owner or operator to exercise different elements of the plan (e.g. qualified individual notification, spill management team, equipment deployment) at different times. However, the exercises must still test every element of the plan every 3 years and, in addition, an unannounced exercise must also be conducted every 3 years. The revised § 154.1055 also allows owners or operators to fulfill the exercise requirements by complying with the National Preparedness for Response Exercise Program (PREP). In view of these changes, a definition of ''full scale'' is not necessary.

*Functional.* The Coast Guard received five comments suggesting that the term ''functional'' be added to the definitions section in the final rule to clarify certain requirements for spill drills. The comments proposed that the term be defined as the limited exercising of specific functions, such as a command and control, internal coordination, external coordination, and tests of the functional planning and response capabilities of personnel and systems. In response to these, and other comments, the Coast Guard has extensively revised § 154.1055 which was entitled ''Drills'' in the IFR and is now entitled ''Exercises.'' The Coast Guard concludes that the Exercises section now adequately addresses the meaning of the term functional. The functional areas are laid out in § 154.1035(b)(3)(iii) of subpart F. Response plans must contain an organizational structure incorporating the listed functional areas. Section 154.1035(b)(3)(iv) requires response plans to also contain job descriptions for the spill management team members in each functional area identified in the organizational structure described in § 154.1035(b)(3)(iii).

*Group IV oil.* The Coast Guard received several comments indicating that the definition for Group IV oil included Group V oil. The Coast Guard has revised the definition of Group IV

oil which is found in the definition of ''persistent oils'' to mean oil having a specific gravity equal to or greater than .95 and less than or equal to 1.0.

*Higher volume port areas.* The Coast Guard received one comment which proposed to add Cook Inlet, Alaska to the list of higher volume port areas. The Coast Guard classified higher volume port areas based upon a study of the relative volumes of oil handled, stored or transported. The U.S. Army Corps of Engineers reports on ''Waterborne Commerce of the United States'' provided the statistics for 34 port areas. The decision to classify some ports as higher volume was based upon the Coast Guard's analysis of the data from the reports. The data revealed a distinct break point. Cook Inlet, Alaska falls below the break point and, as such, does not meet the criteria for designation as a higher volume port area.

*Marine transportation-related facility.* The Coast Guard received three comments on the definition of MTR facility. One comment requested that the Coast Guard clarify the definition by citing specific types of facilities to which it refers. The Coast Guard gave examples of MTR facilities in the preamble to the IFR (e.g., fixed onshore MTR facilities include marinas; and mobile MTR facilities include tank trucks and railroad tank cars). Two other comments requested clarification of Coast Guard and RSPA jurisdiction over pipelines at MTR facilities. As stated in the preamble to the IFR, the definition of transportation-related and non-transportation-related facilities appeared in a 1971 Memorandum of Understanding (MOU) between the Environmental Protection Agency and the Department of Transportation. The MOU appears in the appendix to 40 CFR part 112. The Coast Guard definition of MTR is drawn directly from the MOU. The division point between the transportation-related portion of a pipeline, and the non-transportation-related portion of a pipeline is the first design discontinuance (valve) inside the secondary containment surrounding the tanks in the non-transportation-related portion of the facility. The Coast Guard finds that MTR is clearly defined in accordance with the appropriate legal authority. In a particular situation, if the location of the division between the MTR portion and the non-MTR portion is unclear, then the appropriate Federal officials, including the Coast Guard COTP, should be consulted. As set forth in the definition, these officials may agree to a specific location for the separation.

*Maximum extent practicable.* One comment asserted that the definition of ''maximum extent practicable'' is too rigid and does not allow for the flexibility that Congress intended. According to the comment, location, size, configuration, and other similar factors, should be considered in developing response plans. The Coast Guard has used a number of factors in determining the need to prepare and submit a response plan. The planning process also considers other factors as provided in §§ 154.1035 and 154.1045.

*Maximum most probable discharge.* The Coast Guard received four comments on the definition of maximum most probable discharge suggesting that the Coast Guard revise the maximum most probable discharge volume of 1,200 barrels or 10 percent of the volume of the worst case discharge to be consistent with the EPA maximum most probable discharge volume of 36,000 gallons. As stated in the preamble to the IFR, the Coast Guard based its maximum most probable discharge definition upon historical spill data which indicated that 99 percent of oil spills from coastal zone facilities were approximately 1,200 barrels or less. The Coast Guard concludes that the existing definition is appropriate because it protects the environment while not overly burdening small volume facilities.

*Nearshore area.* The Coast Guard received two comments on the definition of nearshore area. One comment stated that the definition should exclude areas which also meet the definition of rivers and canals. Another comment requested clarification of the relationship between nearshore areas and other terms such as ''close-to-shore'' in Appendix C and ''close to shore response activities in shallow water'' in § 154.1045(e). The definition of ''Nearshore area'' does not presently include areas which meet the definition of rivers and canals because ''Rivers and canals'' is a subset of the definition of ''Inland areas'' not ''Nearshore areas.'' The precise meaning of ''close-to-shore'' is specified at the point where the term is used. Close-to-shore refers to waters six feet or less in depth.

*Notification drill.* The Coast Guard received five comments that suggested the addition of the term ''notification drill'' to the definition section of the final rule. The comments suggested defining the term to mean a test of the facility's system of notifying or activating, according to the facility's response plan, appropriate agencies, the facility spill management team, the oil spill removal organization, and the next higher level of the facility owner's or operator's organization. A notification drill tests the facility's ability to start activation of its plan. To be successful, a notification drill need not result in calls to the top of the facility's response organization. The Coast Guard has extensively revised § 154.1055 which was previously entitled ''Drills'' and is now entitled ''Exercises.'' The revised section includes a ''Qualified Individual notification exercise'' and specifies that compliance with the National Preparedness for Response Exercise Program (PREP) fulfills all exercise requirements. The Coast Guard concludes that these changes adequately address the points raised by the comments.

*Oil.* The Coast Guard received seven comments on this definition. One comment requested that the Coast Guard narrow the definition of oil to exclude substances which contain small percentages of oil such as ship bilge and ballast water. One comment indicated that the definition of oil in the regulations should be consistent with the definition in OPA 90, which excludes hazardous substances subject to CERCLA. Four comments stated that oil should be limited only to petroleum oils which are liquid under the range of ambient conditions which exist at a facility and which are not considered CERCLA substances. OPA 90 did not amend the definition of oil in section 311 of the FWPCA. The Coast Guard's definition of ''oil'' is the same definition used by the FWPCA. The statutory definition refers to oil in any form. That includes oily bilge and ballast water because they have been shown to be sources of oil pollution and discharges may result in substantial harm to the environment. The Coast Guard has determined that it is appropriate for response plans to include provisions covering oils which may not be liquid in all conditions. Such oils may sink to the bottom or remain suspended in the water column. In either case, they may cause substantial harm to the environment if not cleaned up as soon as possible. The Coast Guard concludes that the current definition of oil meets both the letter and the spirit of the FWPCA and therefore is not changing the definition of oil.

Another comment stated that the response plan regulations should not apply to edible oils. The comment contended that if edible oils were excluded from the regulations, the owner or operator of a facility handling edible oils still would be required to report and cleanup a spill under the Clean Water Act (CWA). The Coast Guard definition of ''oil'' is the same definition that is used by the FWPCA. That definition includes edible oils. The

Coast Guard has created new subparts in the final rule to distinguish non-petroleum oils, including edible oils such as animal fats and vegetable oils, from petroleum oils. The scientific data currently available to the Coast Guard strongly indicate that these oils may have an adverse impact upon the environment that is similar to the impact of petroleum oils. As a result, the Coast Guard is not exempting non-petroleum oils from response planning in the final rule. The Coast Guard will continue to assess its position as further data become available on the subject.

*Oil spill removal organization.* The Coast Guard received two comments on the definition of oil spill removal organization which suggested that the definition be revised to be more specific. The Coast Guard crafted the definition if oil spill removal organization to be flexible enough to apply to varying types of organizations which may be called upon to respond to a discharge of oil while complying with OPA 90 requirements. A more specific definition, while useful to some in the industry, might exclude organizations which are able to provide useful and needed response capabilities. The Coast Guard is not changing the definition of oil spill removal organization and suggests that any questions regarding the suitability of a particular organization be directed to the COTP for the area in which the facility is located.

*Other non-petroleum oil.* The Coast Guard has added a definition of ''other non-petroleum oil.'' Other non-petroleum oil means a non-petroleum oil of any kind that is not generally an animal fat or vegetable oil.

*Persistent oil.* The Coast Guard received two comments on the definition of persistent oil. Both comments indicated that the definition proposed in the IFR does not account for oils that have a specific gravity greater than 1.0 that do not sink in salt water. The comments suggest that the definition be revised to include all products which could reasonably be expected to sink in the environment in which they are likely to be discharged. The definition of persistent oils is subdivided based upon specific gravity into Groups II, III, IV and V. The Coast Guard finds that further subdivision is unnecessary because the definition currently includes all oils with a specific gravity of greater than 1.0, regardless of whether or not they sink in salt water. Furthermore, the Coast Guard concludes that, in combination with other factors, even those oils referred to in the comments are very likely to sink in salt water.

*Private shore-based personnel.* The Coast Guard received one comment suggesting the addition of this term to the regulation. The comment indicated that certain Occupational Safety and Health Administration (OSHA) standards are not enforced. The Coast Guard is not tasked with enforcement of OSHA standards except in very specific instances. In the context of pollution control regulations such as OPA 90, the Coast Guard is not responsible for enforcing OSHA standards. Therefore, it is unnecessary for the Coast Guard to add this term to the final rule.

*Rivers and canals.* The Coast Guard received 8 comments on this definition. All eight comments questioned the use of the 12 foot project depth as a criterion for determining whether a waterway is a river or canal. One comment suggested that a project depth of 18 feet be applied as the standard. Four comments suggested that the COTP should be given the discretion to determine which waterways will be determined to be rivers or canals. The 4 comments also stated that the terms rivers and canals should be applied only to certain areas with definite geographical demarcations. Two comments requested clarification on whether the 12-foot project depth criterion applies only to artificially created waterways. Additionally, these 2 comments indicated that the definition of rivers and canals excludes certain rivers. The definition of rivers and canals applies to all waterways with a project depth of 12 feet or less including both naturally and artificially occurring ones. The Coast Guard finds that the 12-foot depth is appropriate to define the inland areas where shallow draft vessels may call at MTR facilities and has not changed it in the final rule. The COTP has the authority to redefine specific operating environments within his or her jurisdiction. This provisions is continued in the final rule.

*Specific gravity.* Several comments encouraged the Coast Guard to define specific gravity in the final rule. The Coast Guard agrees and has used the definition of specific gravity found in ASTM Standard D 1298 entitled ''Standard Practice for Density, Relative Density (Specific Gravity), or API Gravity of Crude Petroleum and Liquid Petroleum Projects by Hydrometer Method.''

*Spill management team.* The Coast Guard received 5 comments on this definition. Four comments stated that the definition of spill management team should reflect the allowance for tiered spill management teams. Another comment indicated that the FRP regulation should be consistent with the VRP regulation which permits the spill management team function to be fulfilled by an organization outside the planning area of the spill. A ''tiered'' spill management team is not prohibited by the regulations as they appeared in the IFR and remain in the final rule. The definition is identical in both the VRP and FRP final rules to ensure consistency in spill management team requirements.

The Coast Guard received 5 comments suggesting that it define the term ''corporate spill management team.'' One comment suggested that this term be defined to mean a national team of operational and functional experts and consultants responsible for moving quickly to a spill site to replace or support a facility response team in managing a response. The Coast Guard also received 5 comments requesting that it add the term ''facility spill management team'' to the regulation. The comments suggested that the term be defined to mean a team responsible for initiating and managing a response to a spill to its conclusion or until a team member from a higher tier in the overall response organization is activated and on-scene to support the facility team or manage the response until its conclusion.

The Coast Guard concludes that the existing definition of ''spill management team'' already incorporates the elements that the comments suggest. The Coast Guard therefore finds that it is both unnecessary and undesirable to complicate the regulation by subdividing the definition of spill management team. Section 154.1035(b) contains detailed requirements regarding plan content including the spill management team. The spill management team may include all persons relevant to an effective spill response except Federal, State and local authorities. It may include local, as well as regional or national corporate officials, operational, as well as functional experts, and representatives of OSROs. The local or on-site spill response team members can, and should, be prepared to integrate other persons, such as regional and national corporate officials, into their spill response team structure.

*Table top.* The Coast Guard received 5 comments requesting that it add the term ''table top'' to the final rule to clarify certain spill drill requirements. The comments suggested that the term be defined as a verbal walk-through to discuss action to be taken during simulated emergency situations, designed to elicit constructive discussion by the participants without time constraints. A table top drill does

not involve the movement of equipment or people. The Coast Guard has extensively revised § 154.1055 which was previously entitled ''Drills'' and is now entitled ''Exercises.'' The revised section specifies that compliance with the National Preparedness for Response Exercise Program (PREP) fulfills all exercise requirements. The Coast Guard concludes that the changes adequately address the points raised by the comments.

*Tier.* The Coast Guard received one comment which stated that the use of ''tier'' in the IFR was unclear, and suggested that the Coast Guard define the term in the final rule. The Coast Guard agrees and has defined ''tier'' in the final rule.

The requirements for response to a worst case discharge to the maximum extent practicable are based on the tiering of response resources. The concept of ''tier'' has two primary components: The amount of equipment and personnel required for a response to a worst case discharge, and the amount of time in which these response resources are required to be on-scene from the time of discovery of an oil discharge. Tiering allows for the arrival of response resources at various stages of the response effort. Tiering the mobilization of response resources recognizes the need for a rapid initial response to an oil spill, yet allows for the identification of response resources from outside the area of the facility to meet the response resource planning requirements.

Sections 154.1045(e) and 154.1047(a)(1) of subpart F of the final rule require a facility owner or operator to identify, by contract or other approved means, equipment and personnel to respond to the facility's worst case discharge for Group I–IV oils and Group V oils, respectively. Appendix C and especially Tables 2, 3, and 4 provide specific guidance on calculating the amount of response equipment required by these sections. Table 4 provides mobilization factors used to calculate the amount of response resources required for on-water recovery for each tier. Table 5 establishes caps to the amount of response resources for which a facility owner or operator must contract in advance. Caps have been established for response resources required for Tiers 1, 2, and 3. The caps recognize the current limits on technology and private removal capabilities. The caps are for planning purposes only; in no way do the caps limit the amount of resources which a facility owner or operator may be required to mobilize during an actual spill response.

Section 154.1045(f) of subpart F establishes three time tiers for the on-scene arrival of response resources for the different operating environments for Group I–IV oils.

*Section 154.1025 Operating Restrictions and Interim Operating Authorization*

The Coast Guard received 10 comments on this section of the regulation. One comment requested that the Coast Guard clarify the requirement for facilities to submit response plans meeting the requirements of § 154.1030 for review and approval to the Coast Guard COTP and the requirement to operate in full compliance with the approved plans.

Section 154.1017 requires all facilities which could reasonably be expected to cause at least substantial harm to the environment to prepare and submit response plans to the Coast Guard. Only facilities which could reasonably be expected to cause significant and substantial harm to the environment are required to submit response plans for review and approval by the Coast Guard. Section 154.1025(b) requires all facilities that are required to prepare response plans to operate in compliance with their plans.

The Coast Guard has added to the final rule a provision that requires facility owners or operators making initial response plan submissions after May 29, 1996, to comply with the requirements of the final rule. The Coast Guard is not requiring facility owners or operators who submitted response plans under the IFR or NVIC to revise their response plans to conform with the requirements of the final rule until the plan's 5-year resubmission date. However, a facility owner or operator who has prepared a response plan under the NVIC or the IFR may comply with any of the provisions of this final rule by revising the appropriate section of the previously submitted plan in accordance with the revision and amendment procedures in § 154.1065. An owner or operator who elects to comply with all of the requirements of the final rule must resubmit the entire plan for review and approval, if appropriate, in accordance with § 154.1060.

One comment suggested that § 154.1025(d) be revised to give the Coast Guard authority to prohibit a facility from operating if the COTP determines that a previously approved plan has not been properly revised or updated. The Coast Guard finds that § 154.1065 provides the COTP with adequate authority to enforce the requirements for response plan amendments and revisions. Under § 154.1065(c), the COTP may require a facility owner or operator to revise a response plan at any time if the COTP determines that the plan does not meet the requirements of this regulation.

Section 154.1025(d) provides four specific circumstances under which a facility may not handle, store, or transport oil including a COTP determination that owner-certified response resources or a submitted response plan do not meet the requirements of the subpart.

One comment indicated that the Coast Guard should limit its review and approval of response plans to 30 days for those plans submitted by February 18, 1993, the deadline for plan submission under the IFR. Limited resources prevented the Coast Guard from guaranteeing a review of every submitted response plan within 30 days. However, to facilitate the operations of facilities requiring Coast Guard review and approval under § 154.1025(c), the Coast Guard permitted these facilities to continue operations for up to 2 years from the date of plan submission. This procedure is in accordance with § 311(j)(5)(F) of the FWPCA.

The same comment suggested that a facility owner or operator should have no more than 30 days to make corrections to a plan if the plan is not approved by the COTP. Because of the varying degrees of plan deficiencies, the Coast Guard has determined that the COTP must have the flexibility to specify the period in which the facility owner or operator could reasonably be expected to correct the deficiencies.

One comment stated that, to be consistent with EPA and RSPA regulations, the Coast Guard should not formally review the letter from a facility owner or operator certifying the availability of response resources. Conversely, another comment indicated that a facility owner or operator should be required to certify in writing not only that he or she has ensured the availability of the necessary response resources, but also that the response resources are capable of being on-scene within the specified response times. The Coast Guard has determined that, until it is able to complete the review of the submitted response plans, its review and acceptance of the certification letters is its primary means of ensuring that facilities are in compliance with the statutory provisions of OPA 90 requiring the identification of response resources. The Coast Guard requires facility owners or operators to indicate in the certification letter that the response resources identified are in compliance with subpart F, G, or H as appropriate.

Section 154.1028(a) requires response resources to be capable of being on-scene within specified times.

One comment indicated that response contractors probably would not have all of the spill response equipment in stock that is necessary to meet the August 18, 1993 deadline in the IFR, particularly the equipment used for recovering oil in shallow waters. The comment requested that the Coast Guard exempt this type of equipment from the response plan requirements. The Coast Guard found that at the time of the comment there was no evidence to indicate that facility owners or operators were unable to identify adequate response resources for recovering oil in shallow water.

Another comment suggested that the Coast Guard clarify the language in § 154.1025(c) permitting interim operating requirements prior to Coast Guard approval of a response plan. The Coast Guard has updated and clarified § 154.1025(c). Additionally, the comment indicated that this paragraph should apply also to substantial harm facilities. Section 154.1025(c) applies only to the owners or operators of facilities for which the Coast Guard must review and approve response plans. Under section 311(j) of the FWPCA and 33 CFR 154.1017(b), only significant and substantial harm facilities are required to submit response plans for Coast Guard review and approval.

*Section 154.1026 Qualified Individual and Alternate Qualified Individual*

The Coast Guard received 9 comments on this section of the IFR. Four of the comments contended that the Coast Guard should permit the qualified individual to be identified in the plan by his or her title, rather than his or her name. Two comments suggested that the Coast Guard establish a mechanism by which the qualified individual can be chosen from a group of individuals among whom the responsibility of the qualified individual rotates. Another comment stated that the facility owner or operator should not be required to provide documentation to the qualified individual in order to activate his or her authority as the qualified individual. The Coast Guard finds that the amount of authority vested in the qualified individual warrants that the response plan identify the specific individual(s) assuming this position. For this reason, the Coast Guard also requires the qualified individual to have documentation which clearly indicates his or her role in the facility's response activities.

Five comments requested clarification on the responder immunity provisions in § 154.1026 (e) and (f). Three of the comments specifically requested that the Coast Guard clarify who is immune from liability under the provisions. Two comments suggested that the Coast Guard address the immunity of the qualified individual in the regulatory text. One comment suggested that the potential liability for the qualified individual is too significant to attract many capable and qualified persons for the position.

As discussed in the preamble to the IFR, section 311(c)(4) of the FWPCA provides that only a responsible party is liable for the removal costs or damages which result from actions taken or omitted in the course of rendering care, assistance, or advice consistent with the National Response Plan or as otherwise directed by the President. A person does not become a responsible party under section 311(c) of the FWPCA by being designated as a qualified individual for response plan purposes. However, a person whose acts or omissions are grossly negligent, or who engages in willful misconduct may, as a result, become liable for the resulting damages. The Coast Guard does not have the authority to grant immunity to the qualified individual and, therefore, cannot establish immunity provisions in the final rule. However, the Coast Guard does recognize that the qualified individual is not responsible for the adequacy of response plans, nor is he or she responsible for contracting response resources beyond the authority delegated from the facility owner or operator. These points are reflected in the regulatory text.

Seven comments addressed the facility owner's or operator's ability to substitute a person from a higher level of management for the designated qualified individual. Four comments requested that the Coast Guard state this option in the regulatory text. Additionally, three comments questioned whether the person from a higher level of management who is assuming the responsibilities of the qualified individual is considered to be the qualified individual during an actual spill response. The Coast Guard does not intend to limit the discretion of the facility owner or operator to select any qualified person to assume the full range of responsibilities of the qualified individual. A facility owner or operator may, at any time, substitute the designated qualified individual or alternate qualified individual with a person from a higher organizational level who meets the requirements of § 154.1026. In order for that person to be recognized as the qualified individual, the facility owner or operator must provide the individual with a document designating them as the qualified individual as required by § 154.1026(c). The Coast Guard has changed the language in § 154.1026 to clarify that the Qualified Individual or an Alternate Qualified Individual must be available on a 24-hour basis and must be able to arrive at the facility within a reasonable time.

One comment requested a more stringent English language requirement for the qualified individual and suggested that the qualified individual be required not only to speak fluent English, but also be required to read, comprehend, and write in English at a level of high school equivalency. Although the regulation states only that the qualified individual must speak fluent English, the Coast Guard concludes that this requirement will restrict the designation of the qualified individuals to persons who can communicate effectively with the On-Scene Coordinator during a response effort.

One comment objected to the requirement that both the qualified individual and the alternate qualified individual be available on a 24-hour basis. The preamble to the IFR stated that the Coast Guard's intent is to ensure that either the qualified individual or the alternate qualified individual be available to respond to an oil spill on a 24-hour basis. In response to this comment, the Coast Guard has reworded § 154.1026(a) to make it clear that either the qualified individual or the alternate, but not both, must be available on a 24-hour basis. This conforms with both the intent stated in the IFR preamble and the related section of the VRP rule.

One comment stressed that the qualified individual should be knowledgeable about not only the financial aspect of an oil spill response, but also the technical issues pertaining to an oil spill response. The Coast Guard agrees that familiarity with response methods is an asset to a Qualified Individual and encourages facility owners or operators to designate such persons as qualified individuals; however the ability to commit response resources is the primary requirement.

Under the regulations, the facility owner or operator is required to identify a qualified individual who is capable of arriving at the facility in a reasonable time. To ensure this, the Coast Guard has amended this section to require the qualified individual to be located in the United States. This issue was previously discussed in the preamble to the IFR.

*Section 154.1028 Methods for Ensuring the Availability of Response Resources by Contract or Other Approved Means*

The Coast Guard received 11 comments on this section of the IFR. Four comments suggested that § 154.1028(a)(1), the first means of identifying response resources by contract or other approved means, be revised to indicate that an oil spill removal organization is unable to guarantee the availability of identified response resources to respond to a spill at a facility. The regulations require the owner or operator of a facility to ''ensure'' the availability of response resources because this is the terminology used in the statute. The Coast Guard has emphasized that response plans are planning documents, not performance criteria, and that neither the owner or operator nor the spill removal organization can guarantee the availability of resources at all times. Acts of God, extremes of weather, labor disputes, the prior commitment of resources, and other events may preclude performance as planned. The Coast Guard also expects certain caveats to be placed in a contract indicating that the response resources identified are not guaranteed to perform response activities at a facility. The Coast Guard expects that the contract will provide for prompt notification of impaired ability to perform and that, when appropriate, facility owners and operators will seek alternate response resources. Notification of changes in response resources may be required under § 154.1065(b)(3).

Another comment stated the Coast Guard should require a facility owner or operator who ensures the availability of response resources by certifying his or her active membership in an oil spill removal organization under § 154.1028(a)(3) also to certify that the oil spill removal organization has committed to respond to an oil spill from the facility. The Coast Guard finds that a facility's active membership in a spill removal organization that has identified specified personnel and equipment required by the regulation to arrive at the specified times is adequate assurance that the spill removal organization will respond to an oil spill at the facility.

Four comments questioned whether an oil spill removal organization that has identified specific response resources to respond to an oil spill at one facility can list the same resources to respond to a spill at another facility. The Coast Guard recognizes that there are current limits on the amount of available response resources in the U.S.

Facilities would be unable to operate due to their inability to identify available response resources which were not contracted for by other facilities. In addition, prohibiting oil spill removal organizations from contracting response resources for more than one facility is economically prohibitive for oil spill removal organizations.

One comment suggested that the Coast Guard remove the fourth method of ensuring by contract or other approved means in § 154.1028(a)(4). Section 154.1028(a)(4) permits the facility owner or operator to ensure the availability of response resources by providing a document that: (1) Identifies response resources to be provided by an oil spill removal organization in the stipulated response times in specific geographic areas; (2) sets out the parties' acknowledgment that the oil spill removal organization intends to commit the resources in the case of a spill; (3) permits the Coast Guard to verify the availability of the response resources through tests, inspections, and drills; and (4) is referenced in the response plan. The comment indicated that this provision is not necessary. The Coast Guard disagrees. Section 154.1028(a)(4) provides the owner or operator of a facility with an alternate means of identifying and ensuring the availability of response resources. This flexibility may prove to be economically essential for certain facilities.

Four comments stated that an oil spill removal organization should not be required to list the names of the response personnel who are identified to be available to respond to an oil spill. The comments contend that OSROs are responsible for maintaining sufficient numbers of trained personnel to respond to any potential spills to which it has committed to respond. The Coast Guard agrees. An OSRO is not required to list the names of persons who are identified to be available to respond to an oil spill; however, an oil spill removal organization must specify the response personnel available to respond to an oil spill.

One comment indicated that a signed service agreement should be sufficient to meet the requirements of § 154.1028(a)(5). As long as the ''signed service agreement'' meets the requirements of § 154.1028 it is acceptable to the Coast Guard. Such an agreement, to be valid under § 154.1028(a)(5), would need to identify specified equipment and personnel available within the applicable stipulated response times; and, the OSRO would need to consent to being identified in the plan.

Another comment stated that the Coast Guard should require a facility owner or operator to ensure that identified response resources not only are available to arrive at stipulated times, but also are capable of sustaining a response effort. The comment indicated that the Coast Guard should analyze the adequacy of response resources on a systems basis to ensure that all identified resources are capable of functioning together. The Coast Guard finds that the response resource requirements are sufficient as set forth in this final rule. The requirements are for planning purposes only and are not intended to be performance standards. Where the Coast Guard has determined that it is both appropriate and necessary it has included times for sustained response effort (see Appendix C).

One comment indicated that a facility that operates only on a seasonal basis should not be required to ensure the availability of response resources when it is not operating. Under the provisions of § 154.100(a), a facility which is in caretaker status is exempt from the requirements of this regulation and, therefore, is not required to ensure the availability of response resources when it is in caretaker status.

One comment suggested that the Coast Guard provide a mechanism for contractors to exercise some control over where they are named as response resources. This comment expanded upon its suggestion by stating that the Coast Guard should require some documentation which validates the relationship between the contractor and the owner or operator. Section 154.1028 provides for five methods of ensuring the availability of response resources, including OSROs, by contract or other approved means. At a minimum, the OSRO must provide written consent to being identified in a response plan. Under some conditions, a written contractual agreement must be executed between the OSRO and the owner or operator of the facility. These contracts must be made available for review upon request by the Coast Guard. The Coast Guard contends that this provides adequate documentation that the proper relationship exists between the OSRO and the owner or operator of the facility.

One comment argued that contracts should be required as an outgrowth of comprehensive risk analyses at each potential spill site rather than the result of an intuitive need to have resources available. The Coast Guard disagrees. OPA 90 requires the preparation and submission of a response plan for an onshore facility that, because of its

location, could reasonably be expected to cause substantial harm to the environment by discharging into or on the navigable waters or adjoining shorelines. The OPA 90 Conference Report (Report 101–653) states that even small onshore facilities could result in substantial harm under some circumstances. Therefore, the requirements to prepare and submit a response plan should be broadly applied. Along with other Federal agencies, the Coast Guard has established criteria to be considered in designating a facility as substantial harm. These factors include, but are not limited to: type and quantity of oils handled in bulk, facility spill history, proximity to public and commercial water supply intakes; proximity to navigable water and proximity to areas of economic importance.

*Section 154.1029 Worst Case Discharge*

The Coast Guard received a total of 16 comments on this section of the IFR. Ten comments addressed the relationship between the Coast Guard's definition of worst case discharge and the term as it is defined by other Federal agencies. Four comments indicated that the Coast Guard's definition of worst case discharge should be the same as the definition found in EPA's response plan regulations. Five comments indicated the need for consistency among Coast Guard, EPA, and RSPA definitions of worst case discharge, and suggested that the Coast Guard adopt RSPA's definition. The Coast Guard disagrees with these comments. Because the Coast Guard, EPA, and RSPA regulate different portions of an oil complex, the amount of oil in a worst case discharge volume from each of these portions of the complex will vary depending on the nature of the facility's operations. Coast Guard regulations address only the MTR portion of the complex.

Three comments indicated that the Coast Guard should adopt the EPA and RSPA policy of giving credit to the facility for the use of secondary containment and other preventive measures. Seven comments reiterated the point that Coast Guard regulations should encourage the use of preventive measures. The Coast Guard strongly encourages facilities to employ pollution prevention measures including secondary containment. However, the nature of MTR facilities makes secondary containment impractical in most cases and therefore very uncommon. For this reason, the Coast Guard does not require MTR facilities to have secondary containment. The Coast Guard does not give credit for such measures because, while these measures will reduce the risk to the environment from an oil spill, they will not eliminate it altogether. Subparts A and B of 33 CFR part 154 already contain pollution prevention regulations. The Coast Guard considers additional pollution prevention regulations to be outside the scope of this regulation.

The Coast Guard received several comments on the amount of the worst case discharge volume. All comments indicated that the worst case discharge volume, as calculated using the formula in § 154.1029(a)(2), should be reduced. Many of the comments stated that the Coast Guard's definition of worst case discharge should not include a total loss of a facility's oil storage capacity and suggested that it be based on factors such as spill history, the capacity of the largest single pipeline, or the capacity of pipelines to the single largest docking pier. Additionally, four comments indicated that the definition exceeded the congressional intent of this term—the largest foreseeable discharge from a facility. The Coast Guard disagrees. Section 4201(b) of OPA 90 defines a worst case discharge as the largest foreseeable discharge (from a facility) in adverse weather conditions. The Coast Guard has interpreted this to mean the largest probable discharge that could occur from a facility and has determined that the worst case discharge includes the volumes of oil from all pipelines between the dock and the storage tanks. Additionally, the formula for calculating the worst case discharge in § 154.1029(a)(2) accounts for the time to detect a spill from the piping and the time to secure the operation.

One comment contended that the Coast Guard should not deny the validity of a response time calculation without substantial evidence that it cannot be accomplished in the time stated. The Coast Guard disagrees. Section 154.1045 and appendix C of the final rule provide requirements on which to base on-water and on-land response times. A facility owner or operator proposing to use more rapid response times bears the burden of proving the validity of the alternate calculation.

One comment suggested that both human and mechanical systems should be considered for detecting spills during transfer operations. The comment notes that, in the preamble to the IFR for this section, the Coast Guard referred only to ''fail-safe features designed into the operation such as leak detection and mechanical methods of isolating segments of the pipeline.''

The Coast Guard is concerned that undue reliance on fail-safe features may lead to an underestimation of necessary response resources in the event of a discharge from the facility. The Coast Guard concludes that it is reasonable to base the worst case discharge planning volume on the failure of such fail-safe features since it has been the Coast Guard's experience that these features do not always work as expected.

One comment argued that worst case discharge calculation methods should be maintained separate from the facility response plan to keep the document from becoming too bulky. The Coast Guard agrees. It is not required that the response plan contain the method or numbers used in calculating the worst case discharge. Only the volume of the average most probable, maximum most probable, and worst case discharges need be provided. However, providing the numbers used to arrive at the worst case discharge will facilitate review of the response plan.

*Section 154.1030 General Response Plan Contents*

The Coast Guard received 10 comments on the requirements for general response plan contents. Two comments expressed approval of the plan format requirements established in the IFR and indicated that other Federal agencies should adopt these requirements. Another comment, however, expressed that the order of the sections required in the plan is inappropriate and should be changed. The Coast Guard has reviewed the response plan formatting requirements and has determined that the current response plan format facilitates easy use of the response plan; therefore, the Coast Guard has made no changes to the formatting requirements in the final rule. Section 154.1030(e), however, does permit a facility owner or operator to submit a response plan that does not follow the format specified in the regulation as long as the plan is supplemented with a detailed cross-reference section identifying the location of the applicable sections required by the regulation.

One comment stated that a facility owner or operator should be permitted to reference previously established procedures in the plan's appendices rather than restating them in the plan. The Coast Guard disagrees. The Coast Guard intends for the response plan to serve as the primary document referenced by facility personnel during a spill response. In the event of an oil discharge, facility personnel should be required to refer to only one comprehensive manual for instruction

on spill response activities and procedures. The regulation, however, does not preclude a facility owner or operator from referencing previously established material in the plan as long as the information required by the regulation is contained in the appropriate section on the response plan.

Many comments addressed the requirements for response plan contents. One comment suggested that response plans be expanded to include measures for prevention, control, containment, and restoration as well as methods for cleanup and disposal. The regulation currently addresses these issues, with the exception of prevention and restoration methods. Section 4202 of OPA 90, the authorizing provision for response plan requirements, grants the Coast Guard authority to issue regulations addressing only spill response activities. It does not address spill prevention or restoration and, therefore, these issues are not addressed by this regulation.

Four comments suggested that the plans address company or site-specific information. Section 154.1035(g) requires facility specific information to be included as an appendix to the plan. A facility owner or operator may also include company specific information as a separate appendix to the plan.

One comment suggested that the Coast Guard reduce the amount of information required in the plan and indicated that the Coast Guard should require only vital emergency response information in the plan to streamline the initial notification process. The regulations establish minimum content requirements for response plans and require information that the Coast Guard has determined to be essential for the plan to be of significant use by facility personnel. The Coast Guard, however, encourages facility owners or operators to develop response plans which incorporate flowcharts and checklists to facilitate the use of the plan in an emergency.

Several comments addressed the requirement for response plans to be consistent with the NCP and the ACPs, particularly as it applies to the identification of sensitive areas under § 154.1035(b)(4). Some comments pointed out the difficulties of developing response plans that are consistent with the ACPs when many of the ACPs are not yet published. In the preamble to the IFR, the Coast Guard recognized that many of the ACPs were not complete when the IFR was published. The Coast Guard indicated that, in these cases, the facility owner or operator would be required to identify the fish and wildlife and sensitive environments described in the applicable local contingency plans. Additionally, Appendix D of part 154 was developed to assist facility owners or operators in identifying fish and wildlife and sensitive environments which could be impacted by a worst case discharge from the facility. Because the coastal ACPs are now complete, in this final rule the Coast Guard has replaced appendix D of part 154 which provided guidance in identifying fish and wildlife and sensitive environments with a new appendix D which covers training. On March 29, 1994, the National Oceanic and Atmospheric Administration (NOAA) of the Department of Commerce published a notice establishing guidelines for the identification of fish and wildlife and sensitive environments to further assist facility owners or operators in identifying areas requiring additional protection from discharged oil (59 FR 14714). This interim guidance was to be used by a facility owner or operator until the applicable ACPs were completed.

Since the publication of the NOAA guidance, all of the ACPs have been completed. Facility owners or operators must ensure that their response plans are in accordance with the ACP in effect 6 months prior to initial plan submission or the annual plan review required under § 154.1065(a). The facility owner or operator who submits plan is not required to, but may, at the owner or operator's option, conform to an ACP which is less than 6 months old at the time of plan submission.

One comment expressed that the ACPs should be open for public comment because of their impact on the response plans. Any member of the public may attend meetings held on the development of the ACP.

One comment urged the Coast Guard to provide guidance as to how an owner or operator could cover more than one facility in a response plan. Facility response plans must be developed for a specific facility and it is not practical for a plan to cover more than one facility. Portions of a corporate response plan may be appropriate for inclusion in several facility response plans.

Two comments urged that the facility response plan be part of a more comprehensive plan and not necessarily a stand-alone document. The Coast Guard disagrees. The facility response plan must be comprehensive. While it may reference other documents, it must demonstrate adequate response planning and outline facility response to a discharge from the facility.

*Section 154.1035 Specific Requirements for Facilities That Could Reasonably be Expected to Cause Significant and Substantial Harm to the Environment*

The Coast Guard received 19 comments on the response plan requirements for significant and substantial harm facilities. The following discussion is divided to address the specific sections of the response plan on which comments were received.

*General.* The Coast Guard received 2 comments addressing § 154.1035(a), the response plan requirements for significant and substantial harm facilities, in general. One comment stated that the regulations require too much detail to be continued in the response plans. Another comment suggested that the response plans be required to address planning and prevention programs for spills that occur most frequently. The Coast Guard disagrees. As explained in the discussions on the requirements of § 154.1030, the regulations require information that the Coast Guard has determined to be essential for a response plan to be of significant use to facility personnel for all reasonably foreseeable discharges. The plans address only spill response activities; they do not address spill prevention. Although the Coast Guard encourages facility owners or operators to establish spill prevention measures, they are beyond the scope of this regulation. The Coast Guard has issued pollution prevention regulations in 33 CFR part 154.

*Notification procedures.* Six comments addressed § 154.1035(b)(1), requirements for notification procedures in the response plan. One comment suggested that the Coast Guard require the facility owner or operator to report to the initial notification if there was an early arrival of response equipment and whether response equipment was on-site during the transfer. The comment indicated that this would assist the Coast Guard On-Scene Coordinator (OSC) in assessing the need for additional response resources and in determining an appropriate response strategy for the spill.

Under this section, the facility owner or operator is required to develop a notification sheet, which contains the information identified in Figure 1, to be transmitted to Federal, State, or local agencies in the initial and follow-up notifications of an oil discharges. The Coast Guard limited the required information to the minimum necessary. The facility owner or operator is not

required to use the same format as Figure 1, but must develop a notification sheet that includes space for the information contained in Figure 1. The notification sheet may include any additional information that the facility owner or operator determines could be helpful to responding agencies. For this reason, the Coast Guard will not require additional information to be included on the notification sheet. The Coast Guard, however, urges the facility owner or operator to provide agency officials with any information that will assist them in developing appropriate spill response strategies.

Five comments question whether the facility owner or operator is required to notify each individual in the spill management team and oil spill removal organization. This is not required. However, the facility owner or operator must notify someone in the management team and a representative of the oil spill removal organization. The Coast Guard encourage facility owners or operators to coordinate with the spill management team and oil spill removal organization to designate a primary, and an alternate, point-of-contact for notifications in each organization.

*Facility spill mitigation procedures.* The Coast Guard received two comments on § 154.1035(b)(2), facility spill mitigation procedures which addressed spill prevention measures, secondary containment, and requirements for complexes. These issues have been addressed in discussions on §§ 154.1030, 154.1029, and 154.1017 respectively.

*Facility response activities.* The Coast Guard received two comments on § 154.1035(b)(3) which suggested that the Coast Guard require an OSRO to provide trained personnel necessary to continue operation not only for the first 7 days of the response, but for the total time needed to complete the spill response or until the OSRO is released from its response obligations by the COTP. The comments indicated that 7 days is too short to complete response activities for a large oil spill. The Coast Guard agrees that 7 days is not long enough to complete a response to a large spill; however, the requirements of this section are for planning purposes only. The facility owner or operator is required only to identify resources for the first 7 days of the spill response; however, he or she is required to ensure that adequate response resources are available until all spill response activities are concluded and the resources are dismissed by the OSC.

One of the comments also suggested that the Coast Guard require the use of the National Interagency Incident Management System (NIIMS) Incident Command System (ICS) to standardize incident command in the United States. Facility owners or operators should refer to the ACPs for guidance on the use of NIIMS ICS.

The Coast Guard has revised § 154.1035(b)(3)(iii) and (iv) of the final rule to be consistent with the language found in comparable sections of the VRP regulation. These revisions do not change the substantive requirements of this section.

*Sensitive environments.* The Coast Guard received 14 comments addressing § 154.1035(b)(4), requirements to protect sensitive environments.

Two comments stated that the definition of sensitive environments should be the same in both the Coast Guard and EPA response plan regulations. As previously stated in the discussion on § 154.1020, the Coast Guard has added the term ''fish and wildlife and sensitive environments'' to the definitions in the final rule. This term also has been adopted by EPA. Accordingly, this subsection has been renamed ''Fish and Wildlife and Sensitive Environments'' in the final rule.

Several comments addressed the identification of fish and wildlife and sensitive environments, particularly the requirement that these areas be consistent with those identified in the ACPs. These comments have been addressed in the preamble discussion on § 154.1030.

Many comments indicated that the requirement in the IFR to identify areas of economic importance results in the identification of certain areas that have no significant environmental sensitivity. As an example, one comment indicated that certain areas such as transportation routes are economically important, but not environmentally sensitive. As this comment illustrates, this requirement is not intended to result in the identification of every area of economic importance. It is, however, intended to protect those areas that are not otherwise identified as environmentally sensitive, such as recreational beaches, parks, and aquaculture sites, industrial water intakes and other areas important to the economic well-being of the surrounding community. These areas of economic importance will be identified by the ACPs.

One comment suggested that the Coast Guard include water intakes within fish and wildlife and sensitive environments. The Coast Guard defers to the ACPs for such identifications.

Two comments indicated that this section of the regulation does not provide enough guidance on determining the adequacy of the planning distances and the response equipment identified for the protection of fish and wildlife and sensitive environments. The comments recognized the utility of spill trajectory models, but indicated that they all are not equally reliable. Under the regulation, facility owners or operators are not limited to using spill trajectory models to determine the location of fish and wildlife and sensitive environments that may be affected by a discharge of oil from their facility.

Section 154.1035(b)(4)(iii)(B)(*1*) of the final rule provides facility owners or operators with a basic formula for calculating the distances that discharged oil will flow from the facility under certain conditions at specified times. The Coast Guard recognizes that this formula may not take into account certain geographic and weather-related conditions that normally exist in some ports which may affect the distances that discharged oil may travel from the facility; therefore, the COTP will determine whether the appropriate factors have been accounted for in the identification of fish and wildlife and sensitive environments. The adequacy of the identified resources also will be assessed by the COTP.

The final rule also provides facility owners or operators with a third means of complying with the requirements of this section. In addition to using the formula in § 154.1035(b)(4)(iii)(B)(*1*) or developing a spill trajectory model, facility owners or operators are permitted to use the formula in appendix C of Attachment C–III of EPA's FRP final rule that is most appropriate for the facility (59 FR 34070; July 1, 1994).

Three comments addressed the planning distances required under the IFR. Two comments suggested that the Coast Guard expand the provision in § 154.1035(b)(4)(iii)(B)(*1*) of the IFR, which requires the identification of response resources for areas that will be impacted in 48 hours in non-tidal waters, to non-persistent oils. Because of the rapid rate at which non-persistent oils evaporate, the Coast Guard is only requiring facility owners or operators to plan to respond to areas reached by non-persistent oil in 24 hours in non-tidal waters at maximum current.

Conversely, one comment stated that the planning distances required by this section are significantly greater than is warranted by the potential impact of the facility's worst case discharge. The Coast Guard disagrees and contends that the effects of tides and currents on discharged oil warrant these planning distances.

Two comments addressed response activities for wildlife protection. One comment suggested that response plans be required to address issues such as wildlife dispersal, collection, cleaning, rehabilitation, and recovery. Another comment suggested that response personnel be required to undergo special training for wildlife response. Although the Coast Guard encourages facility owners or operators to identify resources for wildlife response, it will not require these resources to be identified by contract or other approved means. The applicable ACP identifies these private and public sector resources.

One comment states that the facility owner or operator should be permitted to estimate the amount of shoreline requiring protection and suggested that the estimate be reviewed and approved by the COTP. The regulation requires the owner or operator to identify required quantities of boom for the protection of fish and wildlife and sensitive environments. Facility owners or operators will be expected to identify enough boom to adequately protect each of the fish and wildlife and sensitive environments identified in their plan.

Another comment indicated that 1 day should be reduced from the planning requirement if the response equipment is determined to be capable of arriving in less than half of the maximum required arrival time. The Coast Guard encourages the early arrival of response resources; however, it does not plan to reduce the requirements of this section.

*Hazard Evaluation and Spill Scenarios.* The Coast Guard received a total of four comments on these two topics. The comments indicated that the final rule should include information on hazard evaluations and spill scenarios. Sections 154.1035(c) and (d) has been reserved for these topics to ensure consistent formatting of Coast Guard and EPA response plan regulations and to prevent plans which contained information required by the EPA regulations from being rejected by the Coast Guard. However, because the Coast Guard does not intend to provide guidance on hazard evaluation or spill scenarios at this time, it has removed these reserved paragraphs from the final rule and has redesignated the remaining paragraphs of this section accordingly. It will continue to accept plans prepared to comply with both EPA and Coast Guard response plan regulations.

*Training and Exercises.* The Coast Guard received one comment on § 154.1035(c) of the regulation. It is addressed in the preamble discussion on § 154.1055.

*Appendices.* The Coast Guard received one comment on § 154.1035(e) which contended that the information in the appendices is redundant with information found elsewhere in the plan and suggested that the appendices should not be required. The Coast Guard disagrees. However, it recognizes that some of the information in the appendices may be found in other sections of the plan; telephone numbers need not be listed elsewhere in the response plan if provided in the appendices.

*Facility specific information.* The Coast Guard received three comments on § 154.1035(e)(1). Two comments suggested that the Coast Guard should not require material safety data sheets for materials which are not handled by the MTR portion of the facility. The Coast Guard agrees and does not require this information for substances that are not handled by the MTR portion of the facility. The third comment addressed firefighting capabilities and is discussed in the appropriate section of § 154.1045.

*Equipment lists and records.* The Coast Guard received one comment on the § 154.1035(e)(3) requirement to include equipment lists and records in the response plan. The comment stated that the Coast Guard should require the identification of equipment that would be used to respond to the maximum most probable discharge in addition to the equipment used to respond to the average most probable discharge, as currently required by the regulation. The Coast Guard agrees and, under the final rule, requires facility owners or operators to list all the major equipment belonging to the oil spill removal organization for response to a maximum most probable discharge.

Four comments were received addressing the issue of contractor classification and one of these comments also addressed classification as outlined in NVIC 12–92. One comment urged the Coast Guard not to require plans to list specific quantities of equipment when listing a Coast Guard classified oil spill response organization (OSRO) for recovering volumes above the caps. This same comment urged that the Coast Guard and the EPA extend the classification program to include both coastal and inland contractors, arguing that this extension would enhance uniformity and improve response capabilities for large oil spills.

Section 154.1035(g)(3)(iii) of the final rule states that it is not necessary to list response equipment from an OSRO when the OSRO has been classified by the Coast Guard and its capacity has been determined to equal or exceed the response capability needed by the facility. The Coast Guard will accept the listing of an appropriate OSRO for response resources up to and beyond the listed caps. The EPA has determined that it will utilize the OSRO classification system established by the Coast Guard. An OSRO may be classified for certain size discharges and operations in certain specified geographic areas. Both coastal and inland contractors may apply for classification by the Coast Guard.

One comment argued that industry rather than the Coast Guard should certify contractors. The Coast Guard finds that this is impractical. The Coast Guard is concerned that inconsistencies may occur in the classification of OSROs unless it is conducted by one organization. At the present time, the Coast Guard is the appropriate agency to conduct on OSRO classification program. The Coast Guard plans to explore using third parties to inspect or approve OSROs.

*Section 154.1040 Specific Requirements for Facilities That Could Reasonably be Expected to Cause Substantial Harm to the Environment*

The Coast Guard received 2 comments on this section of the IFR. One comment indicated that the requirement for significant and substantial harm facilities to identify a corporate organizational structure that would be used to manage the oil spill response under § 154.1035(b)(3)(iii) should be applied to substantial harm facilities. Additionally, the comment suggested that the Coast Guard require contacts for wildlife response resources; however, another comment stated that these facilities should be required to use legally binding contracts for the identification of all responses resources. The Coast Guard disagrees. The requirements of this section were developed to lessen the regulatory burden and economic impact on substantial harm facilities. The Coast Guard has determined that the costs of identifying a corporate organizational structure and contracting for response resources outweigh the benefits for substantial harm facilities.

The IFR required the owners or operators of substantial harm facilities to have at least 200 feet of containment boom immediately available to respond to the average most probable discharge. The IFR was unintentionally more stringent for substantial harm facilities than for significant and substantial harm facilities. However, under the final rule, the requirement has been reduced to permit facility owner or operators to identify 200 feet of boom and the means

of deploying it that is capable of arriving at the spill site within 1 hour of the detection of the spill.

*Section 155.1041 Specific Response Information to be Maintained on Mobile MTR Facilities*

The Coast Guard received one comment on this section of the IFR which addresses contracts or training permits for wildlife response. This issue is addressed in the discussion of fish and wildlife and sensitive environment requirements in § 154.1035.

*Section 154.1045 Response Plan Development and Evaluation Criteria for Facilities That Handle, Store, or Transport Group I Through Group IV Petroleum Oils*

The Coast Guard received several comments addressing this section which concerns the inclusion of certain information in the response plans for facilities handling, storing, or transporting Group I through Group IV petroleum oils. Two of these comments addressed this section generally. One comment argued that the Coast Guard should require contracts or training and permits, for wildlife response. As indicated in the discussion on fish and wildlife and sensitive environments in § 154.1035, the Coast Guard will not require these resources to be contracted for in the final rule.

Another comment contended that the regulations should provide further guidance on matching response equipment with the grade of petroleum oil spilled, arguing that the groups of petroleum oil do not necessarily correspond to the grades of petroleum oil and that the grade spilled is not necessarily the grade recovered. Response equipment must be certified for the grade of oil handled, stored or transported by any facility for which the equipment is identified as a response resource. The Coast Guard expects that discharged petroleum oil will weather and that the grade of petroleum oil discharged will weather sufficiently to be recovered by response equipment.

*Reclassification of bodies of water.* Six comments were received specifically addressing the COTP's reclassification of specific bodies of water as being operating environments needing more or less stringent response resource planning in § 154.1045(a)(3). Four comments argued that significant wave height may be such that it is unsafe to conduct recovery operations, making more response equipment moot. These comments suggested that the regulation allow less response equipment if operation would be unsafe in wave conditions exceeding the significant wave height criteria during more than 35 percent of the year. The Coast Guard requires the facility owner or operator to plan to recover the oil in the operating environment in which the facility is located. As stated in § 154.1010, the regulation establishes a planning standard and not a performance standard. Decisions on whether to deploy equipment at the time of a discharge will remain with the COTP in consultation with the responsible party and OSRO.

Two comments argued that significant wave height is only one criterion which should be considered during the reclassification determination. These comments stated that the presence of debris, ice, currents, wind, and darkness should also be determining factors. These comments further argued that the standard for reducing classification should be the presence of prevailing wave conditions not exceeding the significant wave height criteria for the less stringent operating environment during 85 percent of the year while the standard for increasing classification should remain the presence of prevailing wave conditions exceeding the significant wave height criteria for more than 35 percent of the year.

The Coast Guard has retained the percentages from the IFR. The 35 percent threshold provides balance between anticipated area environmental conditions and equipment available to operate in those conditions. Setting a lower threshold would require new areas to stockpile equipment with the capability of operating in unlikely conditions. The rule requires that ice conditions, debris, and other conditions as determined by the COTP must also be considered in the area where the facility operates.

*Requirements pertaining to average most probable discharges.* The Coast Guard received one comment which responded to the requirements of § 154.1045(c). It argued that the Coast Guard should clarify that facilities are not responsible or obligated to respond to spills from vessels they do not own or operate. While the Coast Guard requires the facility to plan for responding to an average most probable discharge at the facility, it remains the responsibility of the owner or operator of the source of the discharge to initiate effective response at the time of the discharge. The regulation does not require the facility to respond to a discharge from a vessel and the regulation has not been changed to state otherwise.

Under § 154.1045(c) (1) and (2) of the IFR, facility owners or operators are required to identify certain equipment such as containment boom and means of deploying and anchoring the boom, oil recovery devices, and recovered oil storage capacity that are capable of arriving at the facility within specified times to respond to the average most probable discharge. Upon review of the IFR, the Coast Guard determined that the phrase ''at the facility'' does not indicate that this response equipment must be available at the scene of the oil discharge in the specified times. Accordingly, the Coast Guard has revised these provisions of the final rule to require the identification of response equipment that is capable of arriving at the spill site within the times specified by this section. This change also applies to comparable sections in § 154.1047 of subpart F, § 154.1225 of subpart H, and § 154.1325 of subpart I.

*Requirements pertaining to response to maximum most probable discharges.* The Coast Guard received three comments in response to the requirements of § 154.1045(d). One comment argued that the planned response time for possible spills in the Great Lakes should not be lower than it is for other bodies of water. The Coast Guard disagrees and has retained the 6-hour requirement for response to a maximum most probable discharge. The Great Lakes are unique, self-contained, bodies of fresh water especially vulnerable to spills. Because of this, it is especially important that the response capability be available to respond rapidly. The maximum most probable discharge response capability provides a base capability that can be deployed rapidly to the scene of a discharge to mitigate its effects.

Several comments argued that the Coast Guard should allow resources located in one or more COTP zones to be moved to another zone as part of a response effort. The Coast Guard expects that response resources may be shifted in response to large pollution incidents. The rule does not prohibit this shifting of resources. It may be necessary for the facility owner or operator to confirm the availability of other response resources or those response resources identified in the response plan above the caps. The Coast Guard reserves the right to invalidate a plan due to the absence of available response resources to respond to a maximum most probable discharge or the worst case discharge. However, under the final rule, the COTP may impose operational restrictions on a case-by-case basis, such as limitations on the number of transfers at the facility, or, where appropriate, may permit the facility to operate with temporarily modified response plan

development and evaluation criteria (e.g., modified response times, alternate response resources, etc.).

The Coast Guard has made minor organizational changes to this section of the final rule to clarify the planning requirements for the maximum most probable discharge. These changes more clearly indicate that resources identified to respond to the maximum most probable discharge include all equipment and personnel identified to respond to the average most probable discharge.

*Requirements pertaining to response to a worst case discharge to the maximum extent practicable.* The Coast Guard received 3 comments responding to the requirements of § 154.1045(e). One comment argued that owners and operators should be required to plan only for a worst case discharge.

The Coast Guard's authority to regulate is broader than OPA 90. Section 311(j)(1)(C) of the FWPCA authorizes the Coast Guard to require planning for discharges other than the worst case. Based on the recommendations of the Oil Spill Response Plan Negotiated Rulemaking Committee, the Coast Guard determined that the rule also should address operational discharges. The Coast Guard is using its FWPCA authority to require planning for spills other than a worst case discharge.

*Response times and tiers.* The Coast Guard received 12 comments addressing the response time and tier requirements for worst case discharges (§ 154.1045(f)). Two of these comments dealt with the issue of giving credit for early arrival of response resources. One comment argued in favor of this proposal and suggested that such credit take the form of a reduction of monetary liability for a spill, a reduction in liability for natural resource damage assessments, or a reduction in drill requirements. One comment argued against issuing credit for early arrival. This comment specifically argued that credit should not be given for dispersants if such credit would result in planning to use a lesser amount of mechanical recovery equipment during a spill. The other comment argued that the Coast Guard should encourage early arrival of response equipment but that it should not issue credit for meeting an early or minimum arrival time.

The rule is written to require the arrival of resources in a timely manner to contain and remove discharged oil before it has the opportunity for greater dispersal. The Coast Guard cannot lessen the monetary liability or the liability for damage to natural resources based on the arrival times of response resources. The early arrival of these resources will lessen the likelihood of damage to natural resources.

The use of dispersants is a valid response technique in certain circumstances. A facility that handles, stores, or transports Group II or III petroleum oils can receive up to 25 percent credit against on-water recovery capability in any environment with year-round preapproval for use of dispersants. The response plan must address the arrival of these dispersants within 12 hours. The Coast Guard's position is that the rule strikes a proper balance in planning for the use of dispersants and mechanical recovery.

One comment addressed the tiering of response resources. The comment indicated that this approach is not useful because it does not allow for an initial response with all available resources. The tiering requirements provide a maximum time in which certain response resources are capable of arriving at the scene of a petroleum oil spill; they do not preclude the early arrival of response resources and, therefore, do not preclude an initial spill response with all available resources.

The same comment also indicated that the evaluation of the equipment's recovery capacity should not be based on the equipment's operability in the different operating environments because those conditions may not exist during an actual spill response. The Coast Guard recognizes that the conditions and assumptions on which a response plan is based may not exist during an actual spill response. However, to develop an effective response plan, a facility owner or operator must identify and plan to respond in the conditions which normally exist in the port or at the facility. As § 154.1010 indicates, the regulation establishes a planning standard and not a performance standard. During an actual spill response, a final assessment as to the type of equipment to be deployed for response to a discharge will be made by the COTP in the consultation with the responsible party and OSRO.

Eight comments addressed various issues concerning the amounts of time allotted for responding to an oil spill. Two comments argued that facilities in higher volume port areas and the Great Lakes should plan using 48-hour response times for Tier 3 response resources. Two comments urged the Coast Guard to increase the Tier 1 response time to 12 hours as opposed to 6 hours for higher volume port areas. Four comments argued that the response times should be the same regardless of the location of the spill. These comments further contended that the major reason for requiring shorter times should be for fish and wildlife and sensitive environment purposes, which varies for vessels but seems irrelevant for stationary facilities. Two comments argued that the response times were too low in light of the levels agreed upon at the Negotiated Rulemaking meetings. One of these comments urged the Coast Guard to reconsider these response times because current response times are difficult and expensive to achieve. One comment urged the Coast Guard to review and revise the response times in light of response capability. This comment also urged the Coast Guard to clarify that response times apply to arrival on-scene rather than deployment of response resources and argued that the Coast Guard should only require first tier dispersants to be on-scene within 12 hours, with more dispersants being available as needed.

The Coast Guard contends that the tiering concept is valid and adequately approximates the availability of response resources. The tiering process reflects the arrival of available response resources from nearby and more distant locations. The response times in this rule are different than those applicable to vessels. The response times for vessels are predicated on responding to an incident at the outermost boundaries of the applicable areas, including up to 6 hours on-water transit of response equipment. Since MTR facilities are located on or along the shoreline, it will not be necessary to account for extensive over-water transit times. The response times provided in the final rule are for the planned arrival of response resources at the MTR facility which is the likely site of the initial cleanup activity and does not account for on-water deployment time. Therefore, the transit times in this final rule are less than those provided for vessel response plans.

One comment addressed the definition of tiers and urged the Coast Guard to adopt the EPA terminology and definitions of tiers to avoid confusion and duplication. The EPA and the Coast Guard have used the same approach to the concept of tiering response resources. Tier has been defined under § 154.1020 of the final rule.

*Identification of firefighting capability.* The Coast Guard received several comments on firefighting capability requirements (§ 154.1045(j)). Because many of the requirements for firefighting capability in this section also are contained in §§ 154.1047 and 154.1049, comments addressing those sections also will be discussed.

Two comments suggested that the coordinator of firefighting activities for a facility should be extremely familiar with the facility and its operations. Additionally, one comment argued that ''sufficient firefighting capacity'' would be difficult to define and should not be included in the rule. Another comment urged the Coast Guard to develop more specific firefighting requirements.

The many variables involved in the design and construction of MTR facilities, the products handled, and the conditions encountered in an actual fire, preclude the development of a fixed definition or formula for calculating ''sufficient firefighting capacity.'' The IRF and the final rule require a facility owner or operator to provide an in-house expert to work with the local and facility firefighting resources. This in-house expert is responsible for verifying that the firefighting resources are sufficient to respond to a worst case scenario. The Coast Guard believes that this approach is flexible enough to be adapted to the peculiarities of different facilities, and at the same time, provides the best practical assurance that the firefighting resources identified in the plan will be able to handle a fire or explosion resulting in a facility's worst case discharge scenario.

One comment argued that firefighting should be addressed by the facility itself along with its local fire department. As written, the rule requires a facility owner or operator to work with local fire departments through an in-house expert when developing and implementing response planning requirements. The rule requires additional firefighting capability, ensured by contract or other approved means, only when both the facility's firefighting resources and the local firefighting resources are inadequate.

One comment argued that petroleum oil fires are so rare that firefighting contracts should not be required. The Coast Guard disagrees. A facility owner or operator must be prepared to respond to any situation which may cause or arise from a petroleum oil discharge into the marine environment. Section 311(j)(5)(C)(iii) of the FWPCA requires resources to remove, mitigate or prevent a discharge including one caused by fire. The Coast Guard has consistently interpreted this provision to authorize the requirement that response plans ensure the availability of firefighting resources by contract or other approved means.

One comment suggested that the Coast Guard cross-reference other applicable firefighting sections of the regulation (§§ 154.1047 and 154.1049). The Coast Guard has determined that these requirements should be set out in each section for ease of reference.

*Consistency with ACP(s).* The Coast Guard received one comment on § 154.1045(k). This comment argued that according to the IFR, a response method not mentioned in the ACP would be considered appropriate to protect fish and wildlife and sensitive environments. This comment suggested that the Coast Guard change the language of the IFR to indicate that the response plan must be consistent with the appropriate ACP.

The Coast Guard has revised this section of the final rule to state that any plan submitted 6 months or more after the appropriate ACP is published must be consistent with that ACP. A plan that is consistent with that ACP must at least identify the fish and wildlife and sensitive environments covered by the ACP; however, a facility owner or operator who has identified additional fish and wildlife and sensitive environments also may identify these areas in the plan. The IFR provision was developed so that the facility owner or operator who submitted a response plan prior to the publication of the ACP would not be required to resubmit or amend the plan once the ACP was published or at the time of each annual revision of the ACP. However, since the publication of the IFR, all of the ACPs have been published; therefore, all facility owners or operators making initial plan submissions under the final rule, the required annual update, or resubmitting plans at the plan's 5-year resubmission date will be required to submit plans which are consistent with the appropriate ACP.

*Future caps review process.* The Coast Guard received seven comments which addressed the provisions of § 154.1045(m) regarding the review of caps in the years 1998 and 2003. One comment argued that the Coast Guard should delete the 1998 cap increases until the need for such increases is assessed. This comment contended that the percentage increase as noted currently in the regulations is arbitrary and instead should be based on valid data.

One important goal of OPA 90 is to increase the overall oil spill response capability in the United States. The Coast Guard believes that setting the 1998 cap now provides a clear upper target for which facility owners or operators and the oil spill response industry must plan. The Coast Guard, however, will conduct an evaluation of the 1998 cap increase to determine if it remains practicable before it becomes effective.

Four comments suggested that if the spill history of a facility between 1993 and 1998 is consistently better than required, then the 25 percent increase in caps should not be required. These comments argued that such an exemption would encourage a quick response to an oil spill. Although the Coast Guard encourages rapid response to an oil spill, it does not believe that exempting certain facilities from the cap increases will expedite a facility's spill response. Additionally, this option does not move toward Congress's goal to increase the overall spill response capacity in the United States.

One comment suggested that planning caps be increased when the plan is due for resubmission rather than in 1998. The Coast Guard has determined that the planning caps will be increased in 1998 provided that the required review confirms the practicability of the increases. A facility owner or operator will not be required to incorporate these caps into their plans until the Coast Guard completes the review.

One comment suggested that the caps be rejected because the Coast Guard offers no rationale for the levels prescribed. This comment further suggested that the Coast Guard reevaluate its approach to caps and instead base it on an analysis of what would be a response to the maximum extent practicable. Alternatively, this comment suggested that the cap increases in Table 5 of the regulations would be acceptable if the amounts were doubled initially.

As discussed in the VRP NPRM (57 FR 27514, June 19, 1992), the caps set out in the IFR were established by the Coast Guard upon recommendation by the Negotiated Rulemaking Committee. The Committee recognized that the current limits on response technologies would require a cap to be placed on the amount of response resources required to be identified for responding to a petroleum oil discharge to the maximum extent practicable. The caps established in the IFR reflect the Coast Guard's assessment of the overall response capability that can be achieved in the United States by 1998 taking into account factors such as anticipated advances in skimming efficiencies and technology, the development of high rate response techniques, and other applicable response technologies.

*Identification of equipment above Tier 3 cap.* One comment was received addressing this provision. It argued that the capability may not exist to meet this requirement. Through its discussions with representatives of the spill response industry, the Coast Guard has determined that adequate response

resources are currently available to enable facility owners or operators to meet this requirement. The final rule requires the identification of response equipment above the Tier 1 and 2 caps, as well as the Tier 3 cap. Since there is no requirement to contract for these resources, this is not a significant change. Response plans submitted prior to the IFR, following the guidance in NVIC 7–92, readily met this requirement.

*Section 154.1047 Response Plan Development and Evaluation Criteria for Facilities That Handle, Store, or Transport Group V Petroleum Oils*

The Coast Guard received three comments on this section which requires the inclusion of certain information in response plans for facilities involving Group V petroleum oils. One comment addressed this section generally, asking for clarification of the term ''the impact of such discharges'' in paragraph (c)(4) of this section which requires the identification of equipment necessary to assess the impact of a worst case discharge of Group V petroleum oils to the maximum extent practicable. The physical characteristics of Group V petroleum oils make them likely to sink when spilled. As a result, traditional response techniques such as containing the spread of the oil on the surface of the water are often ineffective against these petroleum oils. The Coast Guard has required equipment to assess the impact of Group V petroleum oil discharges because that impact cannot be ascertained by the usual methods such as visual examination. The impact of discharges of Group V petroleum oil will only be detectable through the use of such methods as sonar or sampling equipment which can, for example, ascertain what petroleum oil has sunk to the bottom or remains suspended in the water column.

*Response time for deployment of response equipment.* One comment was received which concerned the provisions in § 154.1047(d) regarding the required response time for deployment of equipment. This comment argued that the 24-hour response time would not necessarily be the best for heavy petroleum oils since they are best recovered after hardening. This comment further argued that the Coast Guard should design more appropriate response times for Group V petroleum oils in general and asphalt in particular. The Coast Guard has designed the response times to ensure that an effective response is made while taking into account the different properties of the various petroleum oils, as well as the different natures of the MTR facilities and their operating environments. The Coast Guard recognizes that Group V petroleum oils react differently from other petroleum oils and this is why the Coast Guard separated these oils into a different category. The Coast Guard believes that the 24-hour response time is appropriate given the varied nature of Group V petroleum oils themselves, as well as the varied environments and conditions in which a discharge might occur.

*Firefighting capability.* The Coast Guard received one comment addressing the requirements for firefighting capability contained within § 154.1047(e). This comment argued that ''sufficient firefighting capacity'' would be difficult to define and should not be included in the rule. This comment further argued that firefighting should be addressed by the facility itself along with its local fire department. Identical comments were also made to §§ 154.1045 and 154.1049. See § 154.1045 of this preamble for the Coast Guard response.

*Section 154.1049 Response Plan Development and Evaluation Criteria for Facilities That Handle, Store, or Transport Non-Petroleum Oil*

*Firefighting capability.* The Coast Guard received one comment addressing the requirements for firefighting capability contained within § 154.1049(e) of the IFR. This comment argued that ''sufficient firefighting capacity'' would be difficult to define and should not be included in the rule. This comment further argued that firefighting should be addressed by the facility itself along with its local fire department. Identical comments also were made to §§ 154.1045 and 154.1047. See § 154.1045 of this preamble for the Coast Guard response.

*Non-Petroleum Oils.* The Coast Guard received comments addressing the issue of whether the requirements set forth in the IFR for petroleum oils should apply to animal fats and vegetable oils and other non-petroleum oils. The comments proposed that animal fats and vegetable oils should be more clearly differentiated from petroleum based oils. The comments also suggested allowing unique response procedures for non-petroleum oil spills.

In support of their proposals, the comments provided an industry sponsored study entitled ''Environmental Effects of Releases of Animal Fats and Vegetable Oils to Waterways'' and an associated study. The study claimed that the presence of these oils in the environment does not cause significant harm. The study reached its conclusion based upon its assertions that animal fats and vegetable oils are not toxic to the environment; are essential components of human and wildlife diets; readily biodegrade; and are not persistent in the environment like petroleum oils. The industry study also found that these oils can coat aquatic biota and foul wildlife, causing matting of fur or feathers which may lead to hypothermia; and that animal fats and vegetable oils in the environment have a high Biological Oxygen Demand which could result in oxygen deprivation where there is a large spill in a confined body of water that has a low flow and a low dilution rate.

The comments acknowledged that the International Maritime Organization (IMO) Subcommittee on Bulk Chemicals recently recognized the potentially harmful effect on birds from contact with floating animal fats and vegetable oils discharged from vessels. The comments also conclude, based upon Coast Guard data, that the likelihood of a non-petroleum oil spill of a magnitude to cause environmental harm is extremely small. Additionally, the comments noted the differences in the average size of the vessels which carry petroleum and non-petroleum oils.

In the preamble to the VRP IFR, the Coast Guard disagreed with comments on the VRP NPRM which claimed that edible oils pose less relative risk to the environment. The environmental effects of discharges of non-petroleum oils are clearly documented and in many respects are similar to the environmental effects of discharges of petroleum oils.

In letters to the docket, the Department of the Interior (DOI), the National Oceanic and Atmospheric Administration (NOAA), and the U.S. Fish and Wildlife Service (FWS) discussed the environmental effects of discharges of animal fats and vegetable oils and other non-petroleum oils. DOI, NOAA and FWS all concluded that these oils pose risks to the marine environment when spilled.

The agencies attributed the detrimental effects of non-petroleum oils to the similarity in physical properties between petroleum and non-petroleum oils. The effects outlined by DOI and NOAA include physical coating of bird feathers and mammal fur leading to hypothermia, a loss of buoyancy, and subsequent morality. All three agencies also confirmed the industry report's conclusion that discharges of non-petroleum oils can result in increased Biological Oxygen Demand in receiving waters, thereby decreasing available oxygen in the

affected waterbody and often resulting in fishkills. NOAA also stated that coconut and palm oils are very viscous and when spilled in most coastal waters would behave like Crisco (a hydrogenated animal fat) probably persisting for over a decade.

The Fish and Wildlife Service letter specifically responded to the industry sponsored study. The FWS expressed great concern over the veracity of many of the study's conclusions. The FWS characterized the industry study as ''misleading, weak and erroneous'' and stated that ''key facts have been misrepresented, are incomplete or are omitted,'' and that ''[t]he biggest oversight of the (industry study) is the insignificance given to the fouling potential of the edible oils.''

The FWS acknowledged that there are differences between petroleum and non-petroleum oils including different toxicity levels. It pointed out that physical fouling is similar for both petroleum and non-petroleum oils, and additionally, that the removal of non-petroleum oils can be more difficult and strenuous for the wildlife because, in many instances, complete removal can only be accomplished with scalding hot water and excessive washing. The FWS also stated that wildlife rehabilitators consider edible oils and fats to be some of the most difficult substances to remove from wildlife because the low viscosity of these oils allows deeper penetration into the plumage of fur, creating a more thoroughly contaminated animal.

The FWS was extremely critical of the industry study for suggesting that ingestion of edible oils is harmless to wildlife. The FWS stated that the study misleads uninformed readers by not clarifying that these oils, if consumed in large quantities, will cause harm to organisms through means other than toxicity. For example, according to the FWS, the ingestion of large quantities of non-petroleum oils can cause lipid pneumonia, diarrhea, and dehydration in birds or other wildlife which try to clean these oils from their feathers or coats by preening. This problem is magnified, also according to the FWS, by the fact that these oils do not have a repugnant smell or iridescent appearance to frighten wildlife away, therefore making it more likely that wildlife will come in contact with them during a spill.

In addition to the agency letters, the Coast Guard has placed in the docket several studies attesting to the harmful effects of non-petroleum oils in the environment. One such study, conducted by the International Maritime Organization (IMO) is titled ''Harmful Effects on Birds of Floating Lipophilic Substances Discharged from Ships.'' This study examined the literature concerning non-petroleum oils spilled into the environment and concluded that a number of lipophilic substances, including vegetable oils, cause lethal harm to birds as a specific group of marine life. The study found that lipophilic substances adhere to the feathers of seabirds due to the lipophilic character of the feathers' wax layer. This causes the grid structure of the plumage to be disrupted thereby destroying its insulating properties.

The IMO study gives numerous examples of lethal contamination of seabirds by lipophilic substances spilled from ships. These examples include the death of thousands of seabirds because of a discharge of palm oil off the Netherlands coast; over 300 dead birds as a result of a 1,000-liter spill of rapeseed oil into the harbor of Vancouver, Canada; diseased gannets found along the Dutch coastline whose plumage was found to be coated with paraffin and consequently was no longer water repellent; and surveys of Dutch beaches in 1990 which found that 25 percent of the dead birds washed ashore were at least partly contaminated with vegetable oils. The IMO study also warns that a serious discharge of lipophilic substances in the open sea would cause more harm to seabirds than a nearshore discharge because the birds in the open sea would be unable to rest on shore to clean their plumage.

For these reasons, the Coast Guard has determined that a worst case discharge of animal fats or vegetable oils or other non-petroleum oils from an MTR facility could reasonably be expected to cause harm to the environment. Therefore, facilities that handle, store, or transport these oils, and meet the requirements of § 154.1015(b), are required to prepare and submit response plans. If the facility meets the criteria in § 154.1015(c) for a facility that could cause significant and substantial harm, the response plan must be approved by the Coast Guard.

Because there is insufficient data to support a finding that a spill of a large quantity of animal fats or vegetable oils or other non-petroleum oils will have less adverse impact on the environment than a spill of other kinds of oil, the Coast Guard does not believe that a facility that handles, stores, or transports these oils should have reduced response requirements from those provided in the IFR. However, the Coast Guard does acknowledge that animal fats and vegetable oils or other non-petroleum oils may behave differently from petroleum or petroleum-based oils and has created new subparts H and I to address response plan requirements for these oils. For further information see the discussions of subparts H and I in this preamble.

The Coast Guard received one comment which requested the suspension of the IFR's implementation until hearings can be held on amending the rule to exclude animal and vegetable fats from these regulations. The Coast Guard disagrees. Animal fats and vegetable oils are considered to be oils under the FWPCA. They are specifically defined as non-petroleum oils in the final rule and may result in serious harm to the environment in the event of a discharge to navigable waters. For additional information on this issue, see response to similar comments in § 154.1015.

*Section 154.1050 Training*

The Coast Guard received 15 comments on this section. The comments were not in agreement about whether the Coast Guard should include more specific training requirements in the final rule. Three comments stated they wanted more detailed standards to define the frequency of refresher courses and the minimum level of Occupational Safety and Health Administration (OSHA) training required. One comment suggested making training requirements compatible with EPA standards. Five comments were against developing any additional training requirements.

The Coast Guard has not modified the training requirement of this section in the final rule; however, a new appendix D entitled ''Training Elements for Oil Spill Response Plans'' has been added to subpart 154 to provide guidelines to facility owners or operators for the development of the training portions of their response plans. Additionally, training guidelines for facility response plans, including refresher training, are defined in OSHA standards for emergency response operations in 29 CFR part 1910, appendix D. As indicated in appendix D to part 154, the specifics of the training program should be determined by the facility owner or operator. On the job training and experience may cover parts or all of the training requirements, as appropriate.

Many comments remarked that the responsibility of a facility owner or operator to ensure adequate training of all private response personnel in § 154.1050(d) is inappropriate, costly, and possibly duplicative when an OSRO also is required to demonstrate training. One comment argued that the Coast Guard should require OSROs rather than the owners or operators to be

responsible for training employees and maintaining proper records. The Coast Guard disagrees. While the owner or operator of the facility may shift training requirements to an OSRO through contract or agreement, the owner or operator of the facility remains responsible to ensure that adequate trained response resources are available.

One comment suggested specifying that OSHA retains enforcement authority for working conditions not addressed by Coast Guard standards. The Coast Guard agrees, but does not find it necessary to state that enforcement of the OSHA standards remains with that agency.

One comment mentioned that facilities handling only edible oils should be exempt from the training requirements. The Coast Guard believes training standards are necessary for MTR facilities regardless of the specific type of oil handled, stored, or transported. Therefore, the Coast Guard will not change the requirements.

One comment remarked that it was not practical to ensure that volunteers and casual laborers have OSHA training. In § 154.1050 (a), the Coast Guard requires only that a ''method of training'' be identified to comply with the requirements of 29 CFR 1910.120. Volunteers and casual laborers who are not trained or familiar with hazards associated from contact with oil must be trained to meet OSHA requirements.

*Section 154.1055 Exercises*

The Coast Guard has extensively revised § 154.1055 which was previously entitled ''Drills'' and is now entitled ''Exercises.'' The changes make the terminology in the final rule consistent with the National Preparedness for Response Exercise Program (PREP). In response to the need to provide facility owners or operators with additional direction on conducting exercises, the Coast Guard has revised this section to specify that compliance with PREP fulfills all exercise requirements. However, participation in the PREP itself remains voluntary. If an owner or operator does not choose to participate in the PREP, they may develop their own program for compliance with the exercise requirements in this regulation.

The National Preparedness for Response Exercise Program (PREP) was developed through a joint effort of the Federal agencies implementing OPA 90 response plan regulations and other Federal representatives (e.g., natural resource trustees), state agencies, members of the regulated community, and OSROs. Four public workshops were announced in the Federal Register and were conducted in Washington, DC, and Tampa, FL. These efforts resulted in the creation of unified requirements that reduce the possibility of owners and operators having to participate in numerous duplicative exercises. Following the PREP guidelines has been determined to be an acceptable means to satisfy the OPA 90 requirements.

*Equipment.* The Coast Guard received 16 comments on § 154.1055(a)(3), equipment deployment drills. One comment argued that facility owners and operators should not be penalized when response resources are not available due to a real emergency. The Coast Guard recognizes that actual availability of response resources may be limited by unforeseeable events such as multiple simultaneous oil spills.

Three comments requested additional information on equipment deployment. Another wanted specific information on equipment deployment drills for facilities that have no equipment of their own. One comment stated that the Coast Guard should remove mandatory equipment deployment for the entire plan drill. Two comments remarked that it would be better to require one major equipment deployment exercise in each COTP zone every 3 years. Another comment suggested that full scale drills should determine only the response time of contractors and test only strategic personnel, and not require equipment deployment. The Coast Guard's position is that equipment deployment exercises are vital for maintaining readiness and for testing the effectiveness of a facility's response plan. The revised § 154.1055 continues to require semiannual equipment deployment exercises for facility owned or operated equipment and annual equipment deployment exercises for OSRO equipment. These standards are in accord with the requirements of the PREP program.

*Frequency.* Several comments remarked that the costs of drills were excessive. Many suggested that the frequency of various drills should be decreased. Two comments requested additional details on frequency of drills and credit provisions for separate drill elements. Two comments also suggested that the number of drills required should be decreased over time because they lose effectiveness. As indicated earlier, the Coast Guard has revised the exercises section of the final rule to be in accordance with PREP. It has adjusted the frequency of some exercises. Qualified individual notification exercises are required quarterly instead of monthly and whole plan exercises may now be carried out in parts rather than all at once. The Coast Guard believes exercises continue to be effective over time as equipment and personnel change.

A significant number of comments suggested that credit be given for equipment and personnel drill requirements when other drills provide adequate practice. The different kinds of required exercises test different aspects of a response plan. However, if an exercise includes components which fulfill the requirements for some other type of required exercise (e.g., an equipment deployment exercise that includes a qualified individual notification) then both requirements may be fulfilled by the single exercise.

Two comments suggested that an actual response situation should credit some drills. In this final rule, the Coast Guard has made participation in the PREP program satisfy all exercise requirements. Under PREP, facilities which have an actual response situation may get exercise credit. For more detailed guidance the PREP guidelines should be consulted.

Six comments remarked that participation in one drill by a spill management team (SMT) should meet the requirements for all facilities using that team. The PREP guidelines address this concern in detail; PREP allows multiple facilities using the same SMT to receive credit for a single exercise of that SMT as long as the specified criteria are met.

Seven comments wanted other Federal, state, or local drills to credit Coast Guard drills where appropriate. The Coast Guard has no control over whether other agencies give credit for Coast Guard exercises.

One comment suggested that the Coast Guard coordinate nationally to determine that credit be given only for personnel and equipment which actually participated in drills. The Coast Guard requires that the facility maintain records of exercises; and that these records be made available to the COTP upon request. A facility that lists an OSRO located outside the facility's COTP zone must still satisfy the facility's own COTP that the listed OSRO has fulfilled the applicable exercise requirements. Any facility which does not satisfy the applicable COTP that it has fulfilled its exercise requirements is subject to enforcement action by the COTP under this regulation. The Coast Guard believes that the existing requirements are sufficient to ensure that all personnel and equipment listed in facility response plans are exercised at the appropriate intervals.

*Details of plan.* The Coast Guard received 6 comments suggesting

wording changes. One general comment was received discussing the need for more detailed guidance. Due to extensive revisions of this section, these changes would not be applicable and, therefore, will not be incorporated into the text.

*Unannounced drills.* Some comments requested that the Coast Guard decrease the number of unannounced drills required by § 154.1055(b) to one drill every 1, 2, or 5 years. Many argued that unannounced drills were too costly and should either be limited due to economic concerns or not required at all. Some also remarked that such drills were unnecessary due to the need for other drills. Some comments asserted that operations should not be disrupted by unannounced drills. Others wanted facility owners and operators to be compensated for the cost associated with unannounced drills. Two comments suggested that OSROs and SMTs should only be activated if experience and available resources were believed to be inadequate, two others remarked that only the SMT should be activated. One comment suggested focusing on the initial callout only. A few comments asked that the unannounced drills be limited in scope, kept short and only required after 24-hour notification. One comment suggested requiring notification of the Coast Guard during an unannounced drill and having the Coast Guard observe the drill rather than requesting their own drills separately. Finally, one comment questioned whether customers would be expected to participate in unannounced drills and wondered who would be liable for the costs incurred. The Coast Guard finds that unannounced exercises serve an important purpose in maintaining response resource readiness. The final rule states that annually one of the required exercises (spill management team tabletop, equipment deployment, or emergency procedures) must be conducted unannounced. Unannounced means that the personnel participating in the exercise must not be advised in advance of the exact date, time and scenario of the exercise. Additionally, the facility owner or operator may be required by the COTP to conduct an unannounced exercise at the facility. These COTP initiated exercises will be limited to average most probable discharge exercises as outlined in the facility's response plan. Such exercises involve notifications and equipment deployment. Each COTP will limit the number of COTP initiated unannounced exercises to no more than 4 per year. If a facility owner or operator participates in an unannounced exercise initiated by the COTP, the facility will be exempt from participating in a COTP initiated unannounced exercise for at least 3 years.

*Records.* The Coast Guard received 5 comments on § 154.1055(d), stating that the facility owner or operator should bear the responsibility for keeping and maintaining the records at the facility along with the plan. The comments asserted that it would suffice to have the records signed by an authorized federal representative at the drill site, rather than having the records sent to the Coast Guard. The Coast Guard has changed § 154.1055 to reflect this comment. The section now requires records to be maintained at the facility for 3 years and be made available to the Coast Guard upon request.

*Section 154.1060 Submission and Approval Procedures*

The Coast Guard received 9 comments addressing the proposed requirement for a maximum validation period of up to 5 years. Three comments did not support having a plan expiration date at all, suggesting that the Coast Guard would not have sufficient time to approve the new plans. Four comments suggested that substantive changes as a result of major NCP or ACP revisions should not require plans to be resubmitted until the 5-year term is complete. Several comments did not want facility owners or operators to be required to resubmit plans when no substantive changes were made. One comment asked for clarification as to whether plans must be resubmitted to the Coast Guard 5 years from the date of COTP approval or every 5 years, regardless of whether there have been revisions.

OPA 90 requires a facility owner or operator to resubmit response plans to the Coast Guard for information or approval, as appropriate. In the IFR, the Coast Guard required that response plans must be resubmitted every 5 years regardless of whether any revisions have been made. In his memorandum of April 21, 1995, President Clinton directed agencies to reduce by one-half the frequency of regularly scheduled reports that the public is required to provide to the Government. An exception to this requirement is provided when the agency head determines that such action would not adequately protect the environment or would impede the effective administration of the agency's program. The Coast Guard has reviewed the need for resubmission of response plans at 5-year intervals, and has concluded that extending this to 10 years would not ensure that plans were still viable and would not meet the goal of OPA 90, to improve the response to spills of oil. Changes in technology and in available response resources over a 5-year period may make a response plan fall below acceptable standards. To effectively administer an oversight program and ensure that the maximum practicable response capability is being utilized, review of response plans at 5-year intervals is considered to be an appropriate balance between program needs and reporting burden. The Secretary of Transportation has approved retaining the requirement to submit response plans at a maximum interval of 5 years.

Although the plans need not be resubmitted until the end of the 5-year term, major revisions to a response plan as set out in § 154.1065(b) must be sent to the COTP within 30 days; and deficiencies in an originally submitted plan or a 5-year resubmission of a plan, must be corrected within the time specified by the COTP. NCP or ACP changes will not require resubmission of the plan until the 5-year term is complete. The requirements for plan resubmission after the 5-year term are set out in § 154.1060 of the final rule. The COTP will notify the facility owner or operator in writing of the status of the plan.

Another two comments requested 60 days rather than 30 days to forward major plan corrections to the COTP in response to COTP noted deficiencies in the originally submitted plan, or a 5-year plan resubmission. Several comments proposed that the COTP determine the time period for sending such plan corrections, but that the period be not less than 30 days. As a result of the comments on the 30-day time limit for sending plan corrections to the COTP in response to COTP noted deficiencies, the Coast Guard has changed this provision and now requires that a facility owner or operator correct noted deficiencies within the time period provided by the COTP. This adjustment allows for greater flexibility in determining an appropriate time period based on the corrections needed.

Two comments expressed concern over the number of copies needed to review the facility response plan, and asserted that only one copy was needed by the COTP. The comment also argued that the COTP need not return the approved plan, but instead, that an approval notice would be sufficient. The Coast Guard has changed § 154.1060 of the final rule to require only one copy of the plan to be submitted to the COTP. Additionally, one copy of the plan must be maintained at the facility in a

position where the plan is readily available to persons in charge of conducting transfer operations.

Two comments suggested that a copy of the plan should be forwarded to the state water pollution control agency and the emergency response organization's and be available to the local response organizations upon request. Any state agency which desires a copy of the response plan should request one from the facility owner or operator directly. The Coast Guard cannot involve itself in matters which would be largely governed by state statute. In order to fulfill the requirements for exercises under § 154.1055, OSROs must be familiar with any response plans in which they are listed. The Coast Guard leaves to the owners or operators and their OSROs the specific method by which the OSROs will gain the needed familiarity with the plan.

One comment stated that there should be an appeals process, allowing the facility owner or operator to contest the COTP decision. Both the IFR and the final rule already contain an appeal process located in § 154.1075 and entitled ''Appeal process.''

*Section 154.1065 Plan Review and Revision Procedures*

The Coast Guard received 6 comments on the revision of plans. Four comments requested that the facility owner or operator be given at least 6 months to incorporate major revisions into the plan. One comment suggested that the rule needed a better definition of which facilities are required to revise plans. Another comment requested clarification of which revisions to facility plans require notification of the Coast Guard.

Section 154.1065 requires all facilities to review their plans annually and to send any revisions to the COTP for information or approval; or if no revisions are made during the course that year, the facility owner or operator must certify by letter to the COTP that the plan remains valid with no revisions. Revisions which must be submitted to the COTP for approval or inclusion in the plan are listed in § 154.1065(b). Requirements for 5-year plan resubmission have been removed from § 154.1065(b)(7) and now are specified in § 154.1060(e) of the final rule.

The Coast Guard received two comments recommending that plan revisions be sent to the COTP before planned actions occur, to ensure COTP approval. A 30-day period for approving a plan was also suggested. In order to meet the statutory requirements of OPA 90, facilities must operate in full compliance with their submitted response plan. the Coast Guard concludes that a 30-day period is appropriate for COTP action on submitted revisions(s); and as an effective date for submitted revision(s). This final rule provides that when revision(s) to a plan are necessary, the facility owner or operator must submit the proposed revision(s) to the COTP. The COTP will review the proposed revision(s) and will provide any necessary feedback to the facility owner or operator within 30 days. The revisions will become effective not later than 30 days from their submission to the COTP, unless the COTP indicates otherwise.

Another comment argued that requiring annual certification by facility owners and operators was too administratively burdensome to the Coast Guard. Five comments suggested that it should only be necessary to notify the Coast Guard of significant changes to the plan. Two comments requested that facilities be allowed to file a letter at the facility instead of placing it with the plan itself to avoid unnecessary paper buildup. The Coast Guard has reviewed this requirement in light of these comments and the President's directive to reduce reporting requirements and has eliminated the requirement to submit an annual certification that the owner or operator has reviewed the facility response plan. The regulation has been modified to reflect that the owner or operator is still required to annually review the plan and notify the Coast Guard of changes; however, no report is required if changes are not needed.

*Section 154.1070 Deficiencies*

The Coast Guard received 6 comments addressing this section. One comment stressed that the Coast Guard should allow 30 days, rather than 7, to appeal a deficiency notice from the COTP. Another comment argued that 60 days minimum should be allowed to correct deficiencies. Other comments stated that the revised plan should be submitted within a time period provided by the COTP, after a minimum of 30 days. It has been the Coast Guard's experience that the 7 day appeal limit allows adequate time for a facility owner or operator to make an initial appeal of a COTP issued deficiency and it is not expected that a shorter time frame would be imposed unless a significant hazard exists. However, because these time requirements are relatively new, the Coast Guard will continue to monitor this time frame as well as other time limits contained in the FRP appeal process and may modify the time limits in the future.

One comment urged the Coast Guard to provide more detail on enforcement mechanisms. The Coast Guard has provided guidance directly to the COTPs responsible for enforcing these regulations. This guidance will be updated as the Coast Guard gains more experience in the review and usefulness of response plans.

*Section 154.1075 Appeal Process*

The Coast Guard received 6 comments concerning the appeal process. Four comments wanted the scope of appealable issues more clearly defined. Another comment stated that the Coast Guard should allow a time period to determine whether a facility is a substantial harm, or significant and substantial harm facility. The comment continued by arguing that notification to a facility owner or operator of reclassification should occur within 60 days. If no response is received within this time frame, then the facility owner or operator can assume that reclassification is accepted. The comment continued by stating that 30 days should be allowed to appeal the COTP's decision to the District Commander. Another comment agreed and stressed that facility owners and operators should be able to appeal the COTP's decision that a plan is not adequate. A facility owner or operator may appeal any initial determination made by a COTP regarding that facility's plan. This includes but is not limited to, classification decisions, reclassification decisions and deficiency decisions. The Coast Guard believes the present procedures give owners or operators sufficient time and opportunity to appeal a decision.

Subpart G—Additional Response Plan Requirements for a Trans-Alaska Pipeline Authorization Act (TAPAA) Facility Operating in Prince William Sound, Alaska

*Section 154.1120 Operating Restrictions and Interim Operating Authorization*

The Coast Guard received one comment recommending that it establish a 4-day time limit in which a 200,000 barrel spill must be removed. The comment also suggested changing the wording in this section by replacing ''provided, through an oil spill removal organization required by § 154.1125'' with ''ensured, by contract or other approved means.'' The Coast Guard concludes that the required response times are appropriate and will ensure that adequate response is made in

Prince William Sound. A set 4-day time limit would be too inflexible and would not take into account varying conditions. Section 154.1110 of subpart G requires a TAPAA facility owner or operator to meet all requirements of subpart F in addition to the requirements of subpart G itself. Because subpart F includes requirements for ensuring by contract or other approved means any OSRO, a restatement of the requirement in subpart G is unnecessarily repetitive.

The comment also recommended that the Coast Guard include a statement telling facility owners or operators that plan approval for Prince William Sound facilities is valid only as long as the Prince William Sound Regional Citizens Advisory Council is funded in accordance with OPA 90. The Coast Guard agrees with the comment and has added language to § 154.1120 to that effect.

*Section 154.1125 Additional Response Plan Requirements*

The Coast Guard received one comment on this section stating that additional communities should be included for training. The communities suggested are Seward, Seldovia, Homer, and Kodiak, Alaska. The comment also argued that a minimum of 2,000 trained personnel should be required to remove a 200,000 barrel discharge. The Coast Guard finds that the existing list of communities is currently sufficient and is not adding the communities suggested in the comment. However, should circumstances change, a COTP may recommend adding ports if the spill training requirements are deemed appropriate. This change would be subject to a notice and comment rulemaking project. There were no specific details included in this comment as to the basis for requiring 2,000 personnel for a spill of 200,000 barrels. The COTP has a great deal of experience in this type of operation, and he or she is the one who makes the determination as to the number of personnel necessary for the cleanup of a spill.

*Section 154.1130 Requirements for Prepositioned Response Equipment*

The Coast Guard received one comment on this section of the IFR. The comment agreed that an independent inspection or certification entity was a good idea. The comment also stated that the section should be revised to include the standard for response capabilities which is currently 200,000 barrels per day in the Prince William Sound to reflect the true maximum extent practicable. Maximum extent practicable is based upon the planned capability to respond to a worst case discharge in adverse weather. The standards set forth in the IFR, and continued in the final rule, include a daily recovery rate of 30,000 barrels per day on scene within 2 hours, and a daily recovery rate of 40,000 barrels on scene within 18 hours. In addition, § 154.1130 also requires on-water storage capability of 100,000 barrels to be on scene within 2 hours, and on-water storage capability of 300,000 barrels to be on scene within 12 hours. The Coast Guard concludes that the standards set forth are sufficient to protect Prince William Sound and meet OPA 90's requirement of a response to the maximum extent practicable.

*Section 154.1140 TAPAA Facility Contracting With a Vessel*

The Coast Guard received one comment that the section on TAPAA facility contracting with a vessel was unclear because it referred to subpart G of the VRP IFR, which does not exist. The Coast Guard has corrected the cross reference in this section of the FRP final rule to refer to subpart E of the VRP final rule.

Subpart H—Response Plan Requirements for Facilities That Handle, Store, or Transport Animal Fats and Vegetable Oils

This subpart establishes oil spill response planning requirements for an owner or operator of a facility that handles, stores, or transports animal fats and vegetable oils. It requires such facilities to also meet the applicable requirements set forth in subpart F of this part. This subpart, and subpart I, were created to address concerns that some of the criteria proposed in subpart F of this part were not applicable to animal fats and vegetable oils, and other non-petroleum oils. The specific comments on non-petroleum oils which the Coast Guard received are addressed in this preamble under § 154.1049 which was the non-petroleum oils section of the IFR.

In the preamble to the VRP IFR, the Coast Guard stated that it had been unable to verify that the evaporation and emulsification factors in appendix B of the VRP IFR were applicable to both petroleum oils and non-petroleum oils. As a result of that determination, non-petroleum oils were divided from petroleum oils in both the Vessel and MTR Facility Response Plan regulations.

In response to the comments to the IFR on this issue, the Coast Guard is creating two new subparts and further subdividing non-petroleum oils into three categories. Subpart H covers animal fats and vegetable oils, and subpart I covers other non-petroleum oils.

These new subparts and categories are intended to form the foundation of possible future rulemaking efforts in this area. The Coast Guard welcomes information that may be useful in determining the types and quantities of response equipment necessary to respond to a discharge of these oils, and information on new or innovative response techniques that will be appropriate for these oils. This information would be helpful in deciding whether additional rulemaking is appropriate.

Section 154.1225 requires owners or operators of MTR facilities that handle, store, or transport animal fats and vegetable oils to identify the procedures and equipment necessary to respond to a worst case discharge of these oils to the maximum extent practicable. Animal fats include lard, tallow and other oils of animal origin. Vegetable oils include oils from seeds, nuts, kernels or fruits of plants such as corn oil, safflower oil, jojoba oil, coconut oil or palm oil. Subpart H allows the owner or operator of the facility to propose the amount of equipment needed to respond to a worst case discharge of animal fats or vegetable oils to the maximum extent practicable. It does not include specific requirements for identifying the amount of response resources. The Coast Guard will evaluate the information submitted by the owner or operator of the facility to determine if the resources identified are consistent with the volume of animal fats or vegetable oils that may be spilled as a result of the worst case discharge. This procedure was the same in the IFR.

As with petroleum oils, the owner or operator must ensure the availability of removal equipment through contract or other approved means. At a minimum, the owner or operator of the facility must obtain a letter from an oil spill removal organization stating that it will respond to a worst case discharge from the facility. It is not intended that this letter imply a formal contractual agreement between the parties but that the owner or operator has identified specific response resources and that those resources will respond to a worst case discharge from the facility.

Section 154.1225 also requires the owner or operator of an MTR facility that handles, stores, or transports animal fats and vegetable oils to contract for firefighting resources should the facility not have access to sufficient local firefighting resources. For further discussion of firefighting

resources see the preamble discussion of § 154.1045(j).

The Coast Guard has included in subpart H, for animal fats and vegetable oils, § 154.1225(f) on the use of dispersants, and other similar, new, or unconventional spill mitigation techniques including mechanical dispersal. Response plans for facilities located in environments with year-round preapproval for use of chemical dispersants will be allowed to receive credit up to 25 percent of the plan's required worst case planning volume. In all cases, the identified response measures must comply with the NCP and the applicable ACP.

The Coast Guard has included in appendix C a new paragraph 2.8 covering non-petroleum oils including animal fats and vegetable oils.

Subpart I—Response Plan Requirements for Facilities That Handle, Store, or Transport Other Non-petroleum Oils

This subpart establishes oil spill response planning requirements for an owner or operator of a facility that handles, stores, or transports non-petroleum oils other than animal fats and vegetable oils. It requires such facilities to also meet the applicable requirements set forth in subpart F of this part. This subpart was created to address industry concerns with grouping animal fats and vegetable oils together with other non-petroleum oils. This separation of animal fats and vegetable oils from other non-petroleum oils recognizes that while animal fats and vegetable oils have harmful effects, they are not toxic to the marine environment as maybe other non-petroleum oils. The specific comments on non-petroleum oils which the Coast Guard received are addressed in this preamble under § 154.1049 which was the non-petroleum oils section of the IFR.

Section 154.1325 requires owners or operators of MTR facilities that handle, store, or transport other non-petroleum oils to identify the procedures and equipment necessary to respond to a worst case discharge of these oils to the maximum extent practicable. Other non-petroleum oils include those that are not animal fats or vegetable oils such as essential oils, turpentine and tung oil.

Section 154.1325 allows the owner or operator of the facility to propose the amount of equipment needed to respond to a worst case discharge of other non-petroleum oils to the maximum extent practicable. It does not include specific requirements for identifying the amount of response resources. The Coast Guard will evaluate the information submitted by the owner or operator of the facility to determine if the resources identified are consistent with the volume of other non-petroleum oils that may be spilled as a result of the worst case discharge. This procedure was the same in the IFR.

As with petroleum oils, § 154.1325 requires that the owner or operator must ensure the availability of removal equipment through contract or other approved means. At a minimum, the owner or operator of the facility must obtain a letter from an oil spill removal organization stating that it will respond to a worst case discharge from the facility. It is not intended that this letter imply a formal contractual agreement between the parties but that the owner or operator has identified specific response resources and that those resources will respond to a worst case discharge from the facility.

Subpart I also requires the owner or operator of an MTR facility that handles, stores, or transports other non-petroleum oils to contract for firefighting resources should the facility not have access to sufficient local firefighting resources. For further discussion of firefighting resources see the preamble discussion of § 154.1045(j).

Under subpart I, a response plan may propose, for other non-petroleum oils, the use of other spill mitigation techniques provided that the identified response measures comply with the NCP and the applicable ACP.

The Coast Guard has included in appendix C a new paragraph 2.8 covering the evaluation of response plans for non-petroleum oils including other non-petroleum oils.

Appendix C of Part 154. Guidelines for Determining and Evaluating Required Response Resources for Facility Response Plans

The Coast Guard received one comment recommending that special allowance be made for harbors since they often have conditions similar to rivers and canals. The comment also recommended that such special allowance not be limited only to waterways having depths of 12 feet or less. The Coast Guard disagrees. The term harbor is a broad term and can be applied to a sheltered part of a body of water deep enough to provide anchorage for ships. In reality, a harbor may range from small embayments to large bodies of water. Under the final rule, a harbor could be considered as either being in a rivers and canals operating environment or an inland operating environment. The 12 feet project depth was selected as part of the rivers and canals operating environment to assist in establishing the ability of response resources to operate in specific water depths. The Coast Guard finds that the depth of 12 feet remains relevant in establishing the rivers and canals environment or the inland operating environment.

*1. Purpose*

The Coast Guard did not receive comments to this section but has revised appendix C to reference the newly created subparts H and I and indicate the portions of appendix C which are applicable.

*2. Equipment Operability and Readiness*

2.5 The Coast Guard received 2 comments on this paragraph. Both comments asked whether Table 1 adverse weather conditions can be reduced or increased if the Area Committee determines that the conditions listed in the table are not appropriate. Both comments also recommended that the local COTP be allowed to determine the applicable weather conditions until the ACP is finalized. The comments also requested a mechanism for input by the regulated community to the Area Committee before that committee's determinations are completed.

The COTP may reclassify a specific body of water or location within the COTP zone. Section 154.1045 provides details on COTP reclassification to more or less stringent operating environments. The Coast Guard has issued guidance that strongly encourages Area Committees to solicit advice, guidance, and expertise from all appropriate sources including facility owners or operators, OSROs, environmental groups, members of academia, and concerned citizens.

2.6 The Coast Guard received one comment on this paragraph. The comment noted that currently the Coast Guard, EPA and RSPA each have a different planning speed and recommended that a single standardized speed be adopted. The Coast Guard agrees and the Coast Guard, EPA, and RSPA will use the same planning speeds.

2.7 The Coast Guard received one comment on this paragraph. The comment recommended that each type of boom only be required to have compatible connectors with the same type of boom because, for example, there would be no reason to connect high seas boom to harbor or river boom. This statement in the appendix is there only to remind facility owners or operators to ensure that the equipment on which they are going to rely in the event of an oil spill will be capable of

carrying out the function for which it is intended. If boom of varying types will never be used together, the need for compatible connectors is moot.

2.8 The Coast Guard has added paragraph 2.8 covering the newly created subparts H and I.

*3. Determining Response Resources Required for the Average Most Probable Discharge*

3.1 The Coast Guard received one comment on this paragraph. The comment expressed concern that under the IFR's current language small facilities would be required to purchase booms and boats rather than contracting for them. It recommended that the language be amended to require only a ''means of initiating deployment.'' The Coast Guard disagrees. Section 154.1045(c) provides for the use of contracted response resources for an average most probable discharge provided that the responders can meet the stated response times.

3.2.1 The Coast Guard received one comment on this paragraph. The comment proposed that the Coast Guard amend the language on required boom length to read: ''two times the length of the largest vessel * * * or the amount needed to contain a 50 barrel discharge during a transfer operation.'' The Coast Guard disagrees. Requiring an amount of boom to contain only a ''50 barrel discharge'' could result in many variations between facilities. Requiring a minimum of 1,000 feet creates a more uniform standard.

3.2.2 The Coast Guard received one comment on this paragraph. The comment said that the Coast Guard should require a minimum level of sorbent material to support other recovery equipment. The Coast Guard disagrees. While sorbents are effective in certain circumstances, they are not considered major spill response equipment. They are expendable resources and may be used during routine facility operations. It is the responsibility of the owner or operator of the facility to make sure that adequate amounts of sorbent materials are available.

*5. Determining Response Resources Required for the Worst Case Discharge to the Maximum Extent Practicable*

5.5 The Coast Guard received one comment on this paragraph. This comment recommended that the paragraph be amended by adding language which restricts the definition of shallow water resources to vessels with a fully loaded draft of not more than six feet. The Coast Guard concludes that the response plan must demonstrate that sufficient resourses are available to operate in shallow water. It may be necessary to operate vessels at less than their fully loaded draft. In that event, it may be necessary for the response plan to identify additional resources due to vessels not being able to operate at their fully loaded draft. However, ideally only those vessels which can be utilized in a full range of loading conditions in waters of 6 feet or less depth should be listed for use in close-to-shore response activities (10% of those to be used in the offshore areas and 20% of those to be used in the nearshore inland, Great Lakes, and rivers and canals).

5.6 The Coast Guard received one comment on this paragraph. The comment suggested that a more specific planning standard be adopted for determining the required length of boom in order to avoid wide variations in interpretation. The Coast Guard disagrees. Environmental conditions vary at each recovery site and each fish and wildlife and sensitive environment that must be protected. The Coast Guard contends that there is sufficient guidance, ''rules of thumb'', and practical experience to be used in determining the quantities of boom necessary to contain oil or provide protective booming for fish and wildlife and sensitive environments. In addition, ACPs address the strategies to protect these areas.

*7. Calculating Worst Case Discharge Planning Volumes*

7.2.2 The Coast Guard received one comment on this paragraph. The comment addressed the requirement that facilities which handle, store, or transport oils from different petroleum groups assume, for planning purposes, that the oil groups resulting in the largest on-water recovery volume will be stored in the tank or tanks identified as constituting the worst case discharge. The comment recommended that the oil groups resulting in the largest on-water recovery volume should apply only if the largest tank does, in fact, store the largest oil volume. The comment stated that if the product changed in a way that required more planning then the plan could be amended accordingly at that time. The marine transportation-related (MTR) facility pertains to the piping that conveys the oils between the vessel and the non-transportation-related storage tanks. The MTR facility does not generally include the storage tanks and therefore the comment applies to the non-transportation related portion which is regulated by the EPA, not the Coast Guard. The EPA has addressed this comment in their final rule issued on July 1, 1994 (59 FR 34071).

*8. Determining the Availability of Alternative Response Methods*

8.6 The Coast Guard received one comment on this paragraph. The comment encouraged the Coast Guard to credit a portion of the required on-water recovery capacity for in-situ burning similar to the credit allowed for dispersants. The comment asserted that in-situ burning is most effective early in a spill response and in order to use it as early as possible authority to use in-situ burning must be authorized ahead of time. The Coast Guard will not permit an owner or operator of a facility to use in-situ burning as a planning response strategy in the final rule. The use of in-situ burning is still being studied. As the effectiveness and environmental effects of non-mechanical methods of pollution recovery are studied, they may be included as alternate response strategies. The Coast Guard will evaluate in-situ burning as a permissible response strategy for capability increases in 1998.

*9. Additional Equipment Necessary to Sustain Response Operations*

9.1 The Coast Guard received 1 comment on this paragraph. The comment expressed concern that the language of the IFR regarding additional equipment and personnel allows for varying interpretations. It recommended adoption of a planning standard using a ''systems'' approach to clarify the final rule. The Coast Guard agrees and concludes that the section reflects a ''systems'' approach to spill response. The equipment must be suitable for use with the primary equipment identified in the response plan. Section 2.4 of appendix C and § 154.1045 require that equipment must be capable of operating in the applicable operating environment.

9.2 The Coast Guard received 1 comment on this paragraph. The comment recommended using a 10-hour operating day in determining the level of adequate temporary storage capacity. The comment also asked for guidance from the Coast Guard in determining the time needed for transferring recovered oil to a temporary storage facility. The suggested guidance included pumping capacity, number of oil discharge stations, and any other pertinent factors. The Coast Guard disagrees and determines that the storage capacity should be based on the types and quantities of oil recovery identified in the plan. Pump capacities are variable and discharge stations are dependent on local factors. The owner or operator is

best equipped to estimate and certify the availability of these resources.

Appendix C of Part 154. Tables 1–5

*Table 1 Response Resource Operating Criteria*

The Coast Guard received two comments stating that Tables 1, 2 and 3 are oversimplified because they do not take into account variables such as temperature and flow rate, which the comments claim affect dissipation and emulsification rates. Another comment recommended referencing the factors used to calculate the figures in the tables. That comment asked for clarification because it stated that the 3-day quick mobilization mentioned in the explanatory note is incompatible with the 3, 4, or 6-day sustainability requirements in Table 2. The comment also claimed that the 3-day quick mobilization is inconsistent with the tiering of response equipment which is required to be on-scene within 60 hours.

The Coast Guard disagrees with these comments. Table 1 is based on information for equipment selection in the *1991 World Catalog of Oil Spill Response Products* [Schulze, Robert, ed., 1991]. The American Society of Testing and Material (ASTM) used this resource as the starting point for its oil recovery equipment standard. The values in Table 2 were drawn from the deliberations among the Negotiated Rulemaking Committee. They are based on the general behavior of oil that has been observed during actual discharges. The variances in values reflect the amount of oil most likely to be available for recovery.

The three days referred to by the comment appears in the preamble to the IFR. This reflects a desire for the planned mobilization of response resources within the first 3 days of the response. It should not be confused with the equipment sustainability listed in Table 2.

*Table 2 Removal Capacity Planning Table*

The Coast Guard received one comment remarking that the values in Table 2 should not total over 100 percent. As was explained in the IFR, the Coast Guard recognizes that the percentages exceed 100 percent in the inland, nearshore, Great Lakes, and offshore areas. This reflects a desire to increase the quantity of response that are planned for mobilization within the first 3 days of a response.

*Table 3 Emulsification Factors for Petroleum Oil Groups*

The Coast Guard received four comments on Table 3. One comment asserted that the entire amount of oil spilled will not emulsify because emulsification occurs over time, and therefore, the IFR's rapid spill response requirements will not allow the impact to be as extensive as suggested. The comment stated that emulsification factors are only appropriate for open ocean spills from vessels; and that the factors should not apply to the total worst case discharge in river/nearshore areas. The comment also recommended that the regulations not use emulsification factors at all. Another comment pointed out that emulsification is already accounted for in the derating of recovery devices in paragraph 6.2 of appendix C. Two comments stated that Table 3 is overly simple because it does not take into account other variables which affect emulsification such as flow rate and temperature. One comment recommended that the emulsification factor for Group III oil should be changed to 3.0 to better reflect the level of Alaskan crude oil.

Emulsification factors vary considerably within an oil group and are dependent on many factors, such as temperature and weather conditions. The proposed Table 3 values were derived from ITOPF data and reflected the maximum amount of emulsification that could occur over a prolonged period of time in environmental conditions that favor the emulsification process. No other factors were proposed. The Coast Guard does not require that the entire amount of oil be emulsified. Rather the oil to be emulsified depends on the percentage of recovered floating oil taken from Table 2.

The Coast Guard disagrees with the comment that the emulsification is accounted for in the derating of recovery devices. The emulsification factors listed in Table 3 are to account for actual emulsification that occurs to the oils prior to being encountered by the skimming equipment. The derating factor included, among other things, consideration of the actual skimming device to remove oily material from water, the two issues are unrelated.

The emulsification factors in this final rule are the same as those in the VRP IFR. The factors in the VRP IFR were revised from the factors in the VRP NPRM. The factors were revised down because the Coast Guard was convinced that the original factors were too high.

*Table 5 Response Capability Caps by Operating Area*

The Coast Guard received one comment on Table 5. The comment suggested that the 1998 caps be changed to ''To Be Determined'' because practical experience may demonstrate that the 1993 values may not need to be increased. The Coast Guard disagrees. The caps provided in Table 5 reflect a 25 percent increase in response resources from 1993 to 1998. Prior to these caps becoming effective, the Coast Guard will initiate a review of the cap increases. This review will determine if the scheduled increases for 1998 remain practicable and will also establish a specific cap for 2003.

Appendix D of Part 154. Interim Guidelines for Determining Economically Important and Environmentally Sensitive Areas for Facility Response Plans

The Coast Guard received 12 comments to Appendix D—Guidelines for Determining Economically Important and Environmentally Sensitive Areas for Facility Response Plans. The Coast Guard reviewed the comments and provided them to the National Oceanic and Atmospheric Administration (NOAA). NOAA used the comments in drafting its Federal Register notice entitled ''Guidance for Facility and Vessel Response Plans Fish and Wildlife and Sensitive Environments.''

The Coast Guard has adopted EPA's terminology in this final rule and therefore the term ''Environmentally Sensitive Areas'' has been changed to ''Fish and Wildlife and Sensitive Environments.'' The Coast Guard determined that Appendix D on sensitive areas is unnecessary because fish and wildlife and sensitive environments are identified in the Area Contingency Plans (ACPs) and all coastal ACPs are now complete. Since the ACPs identify fish and wildlife and sensitive environments for each area, there is no longer a need for the Coast Guard to provide the guidance that was contained in appendix D to the IFR. Therefore, the Coast Guard has removed appendix D on sensitive areas from the final rule and has replaced it with a new Appendix D entitled ''Training Elements for Oil Spill Response Plans.''

Appendix D to Part 154—Training Elements for Oil Spill Response Plans

This appendix was added to the final rule to provide guidelines to facility owners and operators for the development of the training portions of their response plans. These guidelines were developed in the same manner as PREP, which is addressed in the preamble discussion on the revisions to § 154.1055.

Assessment

This final rule is a significant regulatory action under section 3(f) of

Executive Order 12866 and has been reviewed by the Office of Management and Budget (OMB) under that order. It requires an assessment of potential costs and benefits under section 6(a)(3) of that order. It is significant under the regulatory policies and procedures of the Department of Transportation (44 FR 11040, February 26, 1979). An Assessment has been prepared and is available in the docket for inspection or copying where indicated under **ADDRESSES**. Seven public comments addressed the Regulatory Evaluation section of the IFR. The comments are discussed in the appropriate section of this discussion.

*1. Facility Response Plan Costs and Benefits*

In the aggregate, the requirement for facility response plans will result in substantial costs to the facilities affected. If all the costs for MTR facilities affected by this rule are attributed to the Coast Guard's regulations, the present value cost of this regulation for the first 10 years is estimated at $305.9 million. In the first year, most of this cost is attributable to conducting training and exercise evaluations and arranging for or providing adequate response capability. In subsequent years, the majority of the cost is attributable to conducting exercising and retaining the response capability. The incremental cost of the entire regulation was $63 million for 1992, but declined to $40 million annually in subsequent years. However, since many of these facilities are complexes which are being jointly regulated by the Coast Guard and the EPA and the total costs are already accounted for under EPA's facility response plan regulation (59 FR 34097, July 1, 1994), these costs could be reduced to reflect this fact. Thus, total present value costs for Coast Guard facility response plans will be $90 million and incremental costs will be $18.7 million for the first full year and $11.9 million for subsequent years.

Four comments argued that the costs of this regulation are excessive and have not been thoroughly examined in the IFR. The Coast Guard disagrees with these comments. The Coast Guard has reexamined its cost data and concludes that costs are not excessive. Two comments argued that the $25,000 cost estimate for large facilities is much too low and does not take into consideration expenditures such as equipment purchases, costs of training, costs of exercises, and retainer fees. With regard to exercises, two comments argued that the costs would be prohibitive. The Coast Guard disagrees with these comments. The Regulatory Impact Analysis did take into consideration equipment purchases, costs of training, costs of exercises, and retainer fees. Facility owners or operators are already required to comply with existing pollution regulations which require them to prepare operations manuals and Spill Prevention Control and Countermeasures (SPCC) plans that address some elements of the facility response plan regulations. The Coast Guard assumed in its analysis that facility owners or operators would not be redundant when complying with requirements. The Coast Guard's analysis indicated that the requirements set forth are the most practical and least burdensome which give acceptable levels of planning for spill response.

The benefit analysis indicates an incremental volume of 230,848 discounted barrels of spilled oil (using a 7 percent discount rate) that will be recovered due to compliance with this regulation. The cost effectiveness ratio (costs divided by benefits) is $1,325 per barrel of oil recovered.

A Regulatory Impact Analysis (RIA) is available in the docket for inspection or copying, as indicated under **ADDRESSES**. The RIA prepared for the IFR was reviewed based upon comments received and no changes made in the final rule caused a great enough impact on costs to require redrafting the RIA. It has also been placed in a separate docket (CGD 91–047) established to facilitate review of the programmatic RIA for titles IV and V of OPA 90.

One comment expressed concern that the RIA for the final rule would be different from the RIA on which the IFR was based and that an opportunity for comment would not be permitted before the rule would be finalized. While the costs and benefits in the RIA have changed from the IFR to the final rule, the change is the result of lowering the discount rate from 10 to 7 percent, reflecting a change in OMB guidance between publication of the IFR and publication of the final rule.

*2. Additional Response Plans Requirements for Trans-Alaska Pipeline Authorization Act (TAPAA) Facilities Operating in Prince William Sound, Alaska*

At present, there is only one Trans-Alaska Pipeline (TAPAA) facility operating in Prince William Sound. This facility is the Valdez Marine Terminal which is operated by Alyeska Pipeline Service Company. This facility transfers approximately 700 million barrels annually to approximately 900 tank vessels.

The increase in unit cost of handling, storing, and transporting crude oil to comply with section 5005 of OPA 90 is relatively small. This can easily be absorbed by the Alyeska Pipeline Service Company.

Overall industry costs for complying with additional response planning requirements were previously discussed in the Draft Regulatory Evaluation for Prince William sound, Alaska referenced in the VRP NPRM published in the Federal Register on June 19, 1992 (57 FR 27514). While this specifically addressed requirements for certain vessels in Prince William Sound, Alaska, it also included the costs and benefits incurred by the sole TAPAA facility located in Prince William Sound. The costs of complying with section 5005 of OPA 90 are estimated to be $232 million for the 10-year period, 1993 through 2002. The benefits include the quick recovery of spilled oil from the environment and subsequent reduction in net impact of the spill. The regulations for Prince William Sound are estimated to increase the volume of recovered oil by 25 percent for crude oil.

A copy of the Assessment for Prince William Sound is available in the docket for inspection or copying, as indicated under ''ADDRESSES.''

Small Entities

The Coast Guard has examined the impact of this rule on small entities. Its analysis indicates that the majority of small businesses subject to this regulation should be able to absorb the estimated compliance costs without experiencing significant adverse economic effects. Therefore, the Coast Guard certifies under section 605(b) of the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*) that this rule will not have a significant economic impact on a substantial number of small entities.

The Coast Guard received one comment to the IFR concerning the impact of the Facility Response Plan regulation on small businesses. The comment argued that smaller operators may not have the resources to comply with regulations as the Coast Guard has envisioned. The Coast Guard disagrees. The regulation may have a significant impact on a very few small facility operators. The impact on small entities of the changes in this final rule are not substantial.

Collection of Information

This rule contains collection-of-information requirements. The Coast Guard previously submitted the requirements to the Office of Management and Budget (OMB) for

review under section 3504(h) of the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*) and OMB approved them. The Coast Guard has submitted revised requirements to OMB for renewed approval under the current OMB Control Number 2115–0595. For subpart F, the section numbers are §§ 154.1025, 154.1030, 154.1050, 154.1055, 154.1060, and 154.1065, and the corresponding OMB approval number is OMB Control Number 2115–0595. For subpart G, the section numbers are §§ 154.1120 and 154.1125, and the corresponding OMB approval number is OMB Control Number 2115–0595. Subparts H and I refer to subpart F for all collection-of-information requirements. Accordingly, additional OMB approval is not needed.

The Coast Guard received one comment responding to this portion of the IFR, which contended that the estimated recordkeeping burden of 4.5 hours annually is much too low. The Coast Guard disagrees. The Coast Guard has reexamined its recordkeeping analysis and has concluded that its estimate is accurate.

Federalism

The Coast Guard has analyzed this rule under the principles and criteria contained in Executive Order 12612 (October 26, 1987) and has determined that this rule does not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

Executive Order 12612 and the FWPCA emphasize the President's and Congress' intent to preserve state authority to address matters of pollution prevention and response. Executive Order 12612 directs a Federal executive branch agency (which includes the Coast Guard) to encourage states to develop their own policies to achieve program objectives. Consequently, a Federalism Assessment would be necessary only if the facility response plan rule unduly impinged on a state's authority to establish its own regulatory structure, or imposed undue costs on a state.

The FWPCA provides convincing evidence of Congress' intent that, within 3 miles of shore, the protection of the marine environment should be a collaborative Federal and state effort. *Chevron v. Governor, State of Alaska,* 726 F.2d 483 (9th Cir. 1984), *cert. denied,* 471 U.S. 1140 (1985). For example, section 402 of the FWPCA (33 U.S.C. 1342) establishes the National Pollutant Discharge Elimination System, a regulatory program for regulating the discharge of pollutants into U.S. navigable waters. Minimum Federal standards apply to the discharge of certain pollutants, but the States have authority to establish and administer their own permit systems and to set standards stricter than the Federal ones (33 U.S.C. 1342(b) and 1370). Further, in the Declaration of Goals and Policy contained in section 101 of the FWPCA (33 U.S.C. 1251), Congress states that it is the policy of the Congress to recognize, preserve, and protect the primary responsibilities and rights of States to prevent, reduce, and eliminate pollution of land and water resources.

United States courts have long recognized the rights of States to make both U.S.-flag and foreign-flag vessels conform to ''reasonable, nondiscriminatory conservation and environmental protection measures * * * imposed by a State.'' *Ray v. Atlantic Richfield,* 435 U.S. 151, 164 (1973). Also section 311(o)(3) of the FWPCA (33 U.S.C. 1321(o)(3)) contains express nonpreemption language. Therefore, a State standard setting more stringent planning requirements for facilities owners and operators in the regulating State's water is encouraged under the FWPCA and in valid as long as the State requirement does not preclude compliance with the Federal requirements. Similarly, if a State chose to establish performance requirements for response to an oil spill, the Federal facility response plan rules would not preclude that option. The Federal facility response plan rules preempt State rules only to the extent that State rules may make it impossible to comply with Federal requirements. *Florida Lime and Avocado Growers v. Paul,* 373 U.S. 132 (1963).

Environment

The Coast Guard considered the environmental impact of this final rule and prepared an Environmental Assessment (EA) under section 311(j) of the FWPCA (33 U.S.C. 1321(j)), and a separate EA for Prince William Sound under section 5005 of OPA 90. These documents were prepared in accordance with the Council on Environmental Quality regulations (40 CFR parts 1500–1508) and Commandant Instruction M16475.1B implementing the provisions of the National Environmental Policy Act (NEPA).

The EA prepared for section 311(j) requirements was amended when section 5209(b) of the Coast Guard Authorization Act of 1992 (Pub. L. 102–587) declared offshore supply vessels and certain fishing vessels not to be ''tank vessels'' for purposes of implementing the VRP rule. The Prince William Sound EA was entirely revised when section 352 of the Department of Transportation Appropriations Act effectively made section 5005 of OPA 90 inapplicable to non-TAPS-trade vessels. The original language of section 5005 created special response plan provisions applicable to all tank vessels operating in Prince Williams Sound, including non-TAPS vessels. The Coast Guard received no comments on the EAs.

The Coast Guard has identified and studies the relevant environmental issues and alternatives, and based on its assessment, does not expect this final rule to result in a significant impact on the quality of the human environment. Therefore, Findings of No Significant Impact (FONSIs) have been prepared. The revised and amended EAs and the FONSIs are available in the public docket where indicated under **ADDRESSES.**

List of Subjects

*33 CFR Part 150*

Harbors, Marine safety, Navigation (water), Occupational safety and health, Oil pollution, Reporting and recordkeeping requirements.

*33 CFR 154*

Fire prevention, Oil pollution, Hazardous substances, Incorporation by reference, Reporting and recordkeeping requirements.

For the reasons set out in the preamble, the interim rule amending 33 CFR parts 150 and 154 which was published at 58 FR 7330 on February 5, 1993, is adopted as final except for changes to part 154 which are set forth below:

## PART 154—FACILITIES TRANSFERRING OIL OR HAZARDOUS MATERIAL IN BULK

1. The authority citation for part 154 continues to read as follows:

Authority: 33 U.S.C. 1231, 1321 (j)(1)(C), (j)(5), (j)(6) and (m)(2); sec. 2, E.O. 12777, 56 FR 54757; 49 CFR 1.46. Subpart F is also issued under 33 U.S.C. 2735.

2. Subpart F of part 154 is revised to read as follows:

### Subpart F—Response Plans for Oil Facilities

Sec.

154.1010 Purpose.
154.1015 Applicability.
154.1016 Facility Classification by COTP.
154.1017 Response plan submission requirements.
154.1020 Definitions.
154.1025 Operating restrictions and interim operating authorization.
154.1026 Qualified individual and alternate qualified individual.
154.1028 Methods of ensuring the availability of response resources by contract or other approved means.
154.1029 Worst case discharge.

154.1030 General response plan contents.
154.1035 Specific requirements for facilities that could reasonably be expected to cause significant and substantial harm to the environment.
154.1040 Specific requirements for facilities that could reasonably be expected to cause substantial harm to the environment.
154.1041 Specific response information to be maintained on mobile MTR facilities.
154.1045 Response plan development and evaluation criteria for facilities that handle, store, or transport Group I through Group IV petroleum oils.
154.1047 Response plan development and evaluation criteria for facilities that handle, store, or transport Group V petroleum oils.
154.1050 Training.
154.1055 Exercises.
154.1057 Inspection and maintenance of response resources.
154.1060 Submission and approval procedures.
154.1065 Plan review and revision procedures.
154.1070 Deficiencies.
154.1075 Appeal process.

## Subpart F—Response Plans for Oil Facilities

### § 154.1010 Purpose.

This subpart establishes oil spill response plan requirements for all marine transportation-related (MTR) facilities (hereafter also referred to as facilities) that could reasonably be expected to cause substantial harm or significant and substantial harm to the environment by discharing oil into or on the navigable waters, adjoining shorelines, or exclusive economic zone. The development of a response plan prepares the facility owner or operator to respond to an oil spill. These requirements specify criteria to be used during the planning process to determine the appropriate response resources. The specific criteria for response resources and their arrival times are not performance standards. The criteria are based on a set of assumptions that may not exist during an actual oil spill incident.

### § 154.1015 Applicability.

(a) This subpart applies to all MTR facilities that because of their location could reasonably be expected to cause at least substantial harm to the environment by discharging oil into or on the navigable waters, adjoining shorelines, or exclusive economic zone.

(b) The following MTR facilities that handle, store, or transport oil, in bulk, could reasonably be expected to cause substantial harm to the environment by discharging oil into or on the navigable waters or adjoining shorelines and are classified as substantial harm MTR facilities:

(1) Fixed MTR onshore facilities capable of transferring oil to or from a vessel with a capacity of 250 barrels or more and deepwater ports;

(2) Mobile MTR facilities used or intended to be used to transfer oil to or from a vessel with a capacity of 250 barrels or more; and

(3) Those MTR facilities specifically designated as substantial harm facilities by the COTP under § 154.1016.

(c) The following MTR facilities that handle, store, or transport oil in bulk could not only reasonably be expected to cause substantial harm, but also significant and substantial harm, to the environment by discharging oil into or on the navigable waters, adjoining shorelines, or exclusive economic zone and are classified as significant and substantial harm MTR facilities:

(1) Deepwater ports, and fixed MTR onshore facilities capable of transferring oil to or from a vessel with a capacity of 250 barrels or more except for facilities that are part of a non-transportation-related fixed onshore facility with a storage capacity of less than 42,000 gallons; and

(2) Those MTR facilities specifically designated as significant and substantial harm facilities by the COTP under § 154.1016.

(d) An MTR facility owner or operator who believes the facility is improperly classified may request review and reclassification in accordance with § 154.1075.

### § 154.1016 Facility classification by COTP.

(a) The COTP may upgrade the classification of:

(1) An MTR facility not specified in § 154.1015 (b) or (c) to a facility that could reasonably be expected to cause substantial harm to the environment; or

(2) An MTR facility specified in § 154.1015(b) to a facility that could reasonably be expected to cause significant and substantial harm to the environment.

(b) The COTP may downgrade, the classification of:

(1) An MTR facility specified in § 154.1015(c) to a facility that could reasonably be expected to cause substantial harm to the environment; or

(2) An MTR facility specified in § 154.1015(b) to a facility that could not reasonably be expected to cause substantial, or significant and substantial harm to the environment.

(3) The COTP will consider downgrading an MTR facility's classification only upon receiving a written request for a downgrade of classification from the facility's owner or operator.

(c) When changing a facility classification the COTP may, as appropriate, consider all relevant factors including, but not limited to: Type and quantity of oils handled in bulk; facility spill history; age of facility; proximity to public and commercial water supply intakes; proximity to navigable waters based on the definition of navigable waters in 33 CFR 2.05–25; and proximity to fish and wildlife and sensitive environments.

### 154.1017 Response plan submission requirements.

(a) The owner or operator of an MTR facility identified only in § 154.1015(b), or designated by the COTP as a substantial harm facility, shall prepare and submit to the cognizant COTP a response plan that meets the requirements of §§ 154.1030, 154.1040, 154.1045, or § 154.1047, as appropriate. This applies to:

(1) A mobile MTR facility used or intended to be used to transfer oil to or from a vessel with a capacity of 250 barrels or more; and

(2) A fixed MTR facility specifically designated as a substantial harm facility by the COTP under § 154.1016.

(b) The owner or operator of an MTR facility identified in § 154.1015(c) or designated by the COTP as a significant and substantial harm facility shall prepare and submit for review and approval of the cognizant COTP a response plan that meets the requirements of §§ 154.1030, 154.1035, 154.1045, or 154.1047, as appropriate. This applies to:

(1) A fixed MTR facility capable of transferring oil, in bulk, to or from a vessel with a capacity of 250 barrels or more; and

(2) An MTR facility specifically designated as a significant and substantial harm facility by the COTP under § 154.1016.

(c) In addition to the requirements in paragraphs (a) and (b) of this section, the response plan for a mobile MTR facility must meet the requirements of § 154.1041 subpart F.

### § 154.1020 Definition.

Except as otherwise defined in this section, the definition in 33 CFR 154.105 apply to this subpart and subparts H and I.

*Adverse weather* means the weather conditions that will be considered when identifying response systems and equipment in a response plan for the applicable operating environment. Factors to consider include, but are not limited to, significant wave height as specified in §§ 154.1045, 154.1047, 154.1225, or 154.1325, as appropriate;

ice conditions, temperatures, weather-related visibility, and currents within the COTP zone in which the systems or equipment are intended to function.

*Animal fat* means a non-petroleum oil, fat, or grease derived from animals, and not specifically identified elsewhere in this part.

*Average most probable discharge* means a discharge of the lesser of 50 barrels or 1 percent of the volume of the worst case discharge.

*Captain of the Port (COTP) Zone* means a zone specified in 33 CFR part 3 and, where applicable, the seaward extension of that zone to the outer boundary of the exclusive economic zone (EEZ).

*Complex* means a facility possessing a combination of marine-transportation related and non-transportation-related components that is subject to the jurisdiction of more than one Federal agency under section 311(j) of the Clean Water Act.

*Exclusive economic zone* (EEZ) means the zone contiguous to the territorial sea of the United States extending to a distance up to 200 nautical miles from the baseline from which the breadth of the territorial sea is measured.

*Facility that could reasonably be expected to cause significant and substantial harm* means any MTR facility (including piping and any structures that are used for the transfer of oil between a vessel and a facility) classified as a ''significant and substantial harm'' facility under § 154.1015(c) including a facility specifically designated by the COTP under § 154.1016(a).

*Facility that could reasonably be expected to cause substantial harm* means any MTR facility classified as a ''substantial harm'' facility under § 154.1015(b) including a facility specifically designated by the COTP under § 154.1016(a).

*Fish and Wildlife and Sensitive Environment* means areas that may be identified by either their legal designation or by Area Committees in the applicable Area Contingency Plan (ACP) (for planning) or by members of the Federal On-Scene Coordinator's spill response structure (during responses). These areas may include: Wetlands, national and state parks, critical habitats for endangered or threatened species, wilderness and natural resource areas, marine sanctuaries and estuarine reserves, conservation areas, preserves, wildlife areas, wildlife refuges, wild and scenic rivers, areas of economic importance, recreational areas, national forests, Federal and state lands that are research areas, heritage program areas, land trust areas, and historical and archaeological sites and parks. These areas may also include unique habitats such as: aquaculture sites and agricultural surface water intakes, bird nesting areas, critical biological resource areas, designated migratory routes, and designated seasonal habitats.

*Great Lakes* means Lakes Superior, Michigan, Huron, Erie, and Ontario, their connecting and tributary waters, the Saint Lawrence River as far as Saint Regis, and adjacent port areas.

*Higher volume port area* means the following ports:

(1) Boston, MA.
(2) New York, NY.
(3) Delaware Bay and River to Philadelphia, PA.
(4) St. Croix, VI.
(5) Pascagoula, MS.
(6) Mississippi River from Southwest Pass, LA. to Baton Rouge, LA.
(7) Louisiana Offshore Oil Port (LOOP), LA.
(8) Lake Charles, LA.
(9) Sabine-Neches River, TX.
(10) Galveston Bay and Houston Ship Channel, TX.
(11) Corpus Christi, TX.
(12) Los Angeles/Long Beach harbor, CA.
(13) San Francisco Bay, San Pablo Bay, Carquinez Strait, and Suisun Bay to Antioch, CA.
(14) Straits of Juan De Fuca from Port Angeles, WA, to and including Puget Sound, WA.
(15) Prince William Sound, AK.

*Inland area* means the area shoreward of the boundary lines defined in 46 CFR part 7, except in the Gulf of Mexico. In the Gulf of Mexico, it means the area shoreward of the lines of demarcation (COLREG lines) defined in §§ 80.740 through 80.850 of this chapter. The inland area does not include the Great Lakes.

*Marine transportation-related facility* (MTR facility) means any onshore facility or segment of a complex regulated under section 311(j) of the Federal Water Pollution Control Act (FWPCA) by two or more Federal agencies, including piping and any structure used or intended to be used to transfer oil to or from a vessel, subject to regulation under this part and any deepwater port subject to regulation under part 150 of this chapter. For a facility or segment of a complex regulated by two or more Federal agencies under section 311(j) of the FWPCA, the MTR portion of the complex extends from the facility oil transfer system's connection with the vessel to the first valve inside the secondary containment surrounding tanks in the non-transportation-related portion of the facility or, in the absence of secondary containment, to the valve or manifold adjacent to the tanks comprising the non-transportation-related portion of the facility, unless another location has otherwise been agreed to by the COTP and the appropriate Federal official.

*Maximum extent practicable* means the planned capability to respond to a worst case discharge in adverse weather, as contained in a response plan that meets the criteria in this subpart or in a specific plan approved by the cognizant COTP.

*Maximum most probable discharge* means a discharge of the lesser of 1,200 barrels or 10 percent of the volume of a worst case discharge.

*Nearshore area* means the area extending seaward 12 miles from the boundary lines defined in 46 CFR part 7, except in the Gulf of Mexico. In the Gulf of Mexico, it means the area extending seaward 12 miles from the line of demarcation (COLREG lines) defined in §§ 80.740–80.850 of this chapter.

*Non-persistent or Group I oil* means a petroleum-based oil that, at the time of shipment, consists of hydrocarbon fractions—

(1) At least 50 percent of which by volume, distill at a temperature of 340 degrees C (645 degrees F); and

(2) At least 95 percent of which by volume, distill at a temperature of 370 degrees C (700 degrees F).

*Ocean* means the offshore area and nearshore area as defined in this subpart.

*Offshore area* means the area beyond 12 nautical miles measured from the boundary lines defined in 46 CFR part 7 extending seaward to 50 nautical miles, except in the Gulf of Mexico. In the Gulf of Mexico, it is the area beyond 12 nautical miles of the line of demarcation (COLREG lines) defined in §§ 80.740–80.850 of this chapter extending seaward to 50 nautical miles.

*Oil* means oil of any kind or in any form, including, but not limited to, petroleum, fuel oil, sludge, oil refuse, oil mixed with wastes other than dredge spoil.

*Oil spill removal organization (OSRO)* means an entity that provides response resources.

*On-Scene Coordinator (OSC)* means the definition in the National Oil and Hazardous Substances Pollution Contingency Plan (40 CFR part 300).

*Operating area* means Rivers and Canals, Inland, Nearshore, Great Lakes, or Offshore geographic location(s) in which a facility is handling, storing, or transporting oil.

*Operating environment* means Rivers and Canals, Inland, Great Lakes, or Ocean. These terms are used to define the conditions in which response equipment is designed to function.

*Operating in compliance with the plan* means operating in compliance with the provisions of this subpart including, ensuring the availability of the response resources by contract or other approved means, and conducting the necessary training and drills.

*Other non-petroleum oil* means a non-petroleum oil of any kind that is not generally an animal fat or vegetable oil.

*Persistent oil* means a petroleum-based oil that does not meet the distillation criteria for a non-persistent oil. For the purposes of this subpart, persistent oils are further classified based on specific gravity as follows:

(1) Group II—specific gravity of less than .85.

(2) Group III—specific gravity equal to or greater than .85 and less than .95.

(3) Group IV—specific gravity equal to or greater than .95 and less than or equal to 1.0.

(4) Group V—specific gravity greater than 1.0.

*Qualified individual and alternate qualified individual* means a person located in the United States who meets the requirements of § 154.1026.

*Response activities* means the containment and removal of oil from the land, water, and shorelines, the temporary storage and disposal of recovered oil, or the taking of other actions as necessary to minimize or mitigate damage to the public health or welfare or the environment.

*Response resources* means the personnel, equipment, supplies, and other capability necessary to perform the response activities identified in a response plan.

*Rivers and canals* means a body of water confined within the inland area, including the Intracoastal Waterways and other waterways artificially created for navigation, that has a project depth of 12 feet or less.

*Specific gravity* means the ratio of the mass of a given volume of liquid at 15°C (60°F) to the mass of an equal volume of pure water at the same temperature.

*Spill management team* means the personnel identified to staff the organizational structure identified in a response plan to manage response plan implementation.

*Substantial threat of a discharge* means any incident or condition involving a facility that may create a risk of discharge of oil. Such incidents include, but are not limited to storage tank or piping failures, above ground or underground leaks, fires, explosions, flooding, spills contained within the facility, or other similar occurrences.

*Tier* means the combination of required response resources and the times within which the resources must arrive on scene.

[Note: Tiers are applied in three categories:
(1) Higher Volume Port Areas,
(2) Great Lakes, and
(3) All other operating environments, including rivers and canals, inland, nearshore, and offshore areas.
Appendix C, Table 4 of this part, provides specific guidance on calculating response resources. Sections 154.1045(f) and 154.1135, set forth the required times within which the response resources must arrive on-scene.]

*Vegetable oil* means a non-petroleum oil or fat derived from plant seeds, nuts, kernels or fruits, and not specifically identified elsewhere in this part.

*Worst case discharge* means in the case of an onshore facility and deepwater port, the largest foreseeable discharge in adverse weather conditions meeting the requirements of § 154.1029.

**§ 154.1025 Operating restrictions and interim operating authorization.**

(a) The owner or operator of an MTR facility who submitted a response plan prior to May 29, 1996, may elect to comply with any of the provisions of this final rule by revising the appropriate section of the previously submitted plan in accordance with § 154.1065. An owner or operator of an MTR facility who elects to comply with all sections of this final rule must resubmit the plan in accordance with § 154.1060 of this part.

(b) No facility subject to this subpart may handle, store, or transport oil unless it is operating in full compliance with a submitted response plan. No facility categorized under § 154.1015(c) as a significant and substantial harm facility may handle, store, or transport oil unless the submitted response plan has been approved by the COTP. The owner or operator of each new facility to which this subpart applies must submit a response plan meeting the requirements listed in § 154.1017 not less than 60 days prior to handling, storing, or transporting oil. Where applicable, the response plan shall be submitted along with the letter of intent required under § 154.110.

(c) Notwithstanding the requirements of paragraph (b) of this section, a facility categorized under § 154.1015(c) as a significant and substantial harm facility may continue to handle, store, or transport oil for 2 years after the date of submission of a response plan, pending approval of that plan. To continue to handle, store, or transport oil without a plan approved by the COTP, the facility owner or operator shall certify in writing to the COTP that the owner or operator has ensured, by contract or other approved means as described in § 154.1028(a), the availability of the necessary private personnel and equipment to respond, to the maximum extend practicable to a worst case discharge or substantial threat of such a discharge from the facility. Provided that the COTP is satisfied with the certification of response resources provided by the owner or operator of the facility, the COTP will provide written authorization for the facility to handle, store, or transport oil while the submitted response plan is being reviewed. Pending approval of the submitted response plan, deficiencies noted by the COTP must be corrected in accordance with § 154.1070.

(d) A facility may not continue to handle, store, or transport oil if—

(1) The COTP determines that the response resources identified in the facility certification statement or reference response plan do not substantially meet the requirements of this subpart;

(2) The contracts or agreements cited in the facility's certification statement or referenced response plans are no longer valid;

(3) The facility is not operating in compliance with the submitted plan;

(4) The response plan has not been resubmitted or approved within the last 5 years; or

(5) The period of the authorization under paragraph (c) of this section has expired.

**§ 154.1026 Qualified individual and alternate qualified individual.**

(a) The response plan must identify a qualified individual and at least one alternate who meet the requirements of this section. The qualified individual or alternate must be available on a 24-hour basis and be able to arrive at the facility in a reasonable time.

(b) The qualified individual and alternate must:

(1) Be located in the United States;

(2) Speak fluent English;

(3) Be familiar with the implementation of the facility response plan; and

(4) Be trained in the responsibilities of the qualified individual under the response plan.

(c) The owner or operator shall provide each qualified individual and alternate qualified individual identified in the plan with a document designating them as a qualified individual and specifying their full authority to:

(1) Activate and engage in contracting with oil spill removal organization(s);

(2) Act as a liaison with the predesignated Federal On-Scene Coordinator (OSC); and

(3) Obligate funds required to carry out response activities.

(d) The owner or operator of a facility may designate an organization to fulfill the role of the qualified individual and the alternate qualified individual. The organization must then identify a qualified individual and at least one alternate qualified individual who meet the requirements of this section. The facility owner or operator is required to list in the response plan the organization, the person identified as the qualified individual, and the person or person(s) identified as the alternate qualified individual(s).

(e) The qualified individual is not responsible for—

(1) The adequacy of response plans prepared by the owner or operator; or

(2) Contracting or obligating funds for response resources beyond the authority contained in their designation from the owner or operator of the facility.

(f) The liability of a qualified individual is considered to be in accordance with the provisions of 33 USC 1321(c)(4).

**§ 154.1028 Methods of ensuring the availability of response resources by contract or other approved means.**

(a) When required in this subpart, the availability of response resources must be ensured by the following methods:

(1) A written contractual agreement with an oil spill removal organization. The agreement must identify and ensure the availability of specified personnel and equipment required under this subpart within stipulated response times in the specified geographic areas;

(2) Certification by the facility owner or operator that specified personnel and equipment required under this subpart are owned, operated, or under the direct control of the facility owner or operator, and are available within stipulated response times in the specified geographic areas;

(3) Active membership in a local or regional oil spill removal organization that has identified specified personnel and equipment required under this subpart that are available to respond to a discharge within stipulated response times in the specified geographic areas;

(4) A document which—

(i) Identifies the personnel, equipment, and services capable of being provided by the oil spill removal organization within stipulated response times in the specified geographic areas;

(ii) Sets out the parties' acknowledgment that the oil spill removal organization intends to commit the resources in the event of a response;

(iii) Permits the Coast Guard to verify the availability of the identified response resources through tests, inspections, and drills; and

(iv) Is referenced in the response plan; or

(5) The identification of an oil spill removal organization with specified equipment and personnel available within stipulated response times in specified geographic areas. The organization must provide written consent to being identified in the plan.

(b) The contracts and documents required in paragraph (a) of this section must be retained at the facility and must be produced for review upon request by the COTP.

**§ 154.1029 Worst case discharge.**

(a) The response plan must use the appropriate criteria in this section to develop the worst case discharge.

(b) For the MTR segment of a facility, not less than—

(1) Where applicable, the loss of the entire capacity of all in-line and break out tank(s) needed for the continuous operation of the pipelines used for the purposes of handling or transporting oil, in bulk, to or from a vessel regardless of the presence of secondary containment; plus

(2) The discharge from all piping carrying oil between the marine transfer manifold and the non-transportation-related portion of the facility. The discharge from each pipe is calculated as follows: The maximum time to discover the release from the pipe in hours, plus the maximum time to shut down flow from the pipe in hours (based on historic discharge data or the best estimate in the absence of historic discharge data for the facility) multiplied by the maximum flow rate expressed in barrels per hour (based on the maximum relief valve setting or maximum system pressure when relief valves are not provided) plus the total line drainage volume expressed in barrels for the pipe between the marine manifold and the non-transportation-related portion of the facility; and

(c) For a mobile facility it means the loss of the entire contents of the container in which the oil is stored or transported.

**§ 154.1030 General response plan contents.**

(a) The plan must be written in English.

(b) A response plan must be divided into the sections listed in this paragraph and formatted in the order specified herein unless noted otherwise. It must also have some easily found marker identifying each section listed below. The following are the sections and subsections of a facility response plan:

(1) Introduction and plan contents.

(2) Emergency response action plan:

(i) Notification procedures.

(ii) Facility's spill mitigation procedures.

(iii) Facility's response activities.

(iv) Fish and wildlife and sensitive environments.

(v) Disposal plan.

(3) Training and Exercises:

(i) Training procedures.

(ii) Exercise procedures.

(4) Plan review and update procedures.

(5) Appendices.

(i) Facility-specific information.

(ii) List of contacts.

(iii) Equipment lists and records.

(iv) Communications plan.

(v) Site-specific safety and health plan.

(vi) List of acronyms and definitions.

(vii) A geographic-specific appendix for each zone in which a mobile facility operates.

(c) The required contents for each section and subsection of the plan are contained in §§ 154.1035, 154.1040, and 154.1041, as appropriate.

(d) The sections and subsections of response plans submitted to the COTP must contain at a minimum all the information required in §§ 154.1035, 154.1040, and 154.1041, as appropriate. It may contain other appropriate sections, subsections, or information that are required by other Federal, State, and local agencies.

(e) For initial and subsequent submission, a plan that does not follow the format specified in paragraph (b) of this section must be supplemented with a detailed cross-reference section to identify the location of the applicable sections required by this subpart.

(f) The information contained in a response plan must be consistent with the National Oil and Hazardous Substances Pollution Contingency Plan (NCP) (40 CFR part 300) and the Area Contingency Plan(s) (ACP) covering the area in which the facility operates. Facility owners or operators shall ensure that their response plans are in accordance with the ACP in effect 6 months prior to initial plan submission or the annual plan review required under § 154.1065(a). Facility owners or operators are not required to, but may at their option, conform to an ACP which is less than 6 months old at the time of plan submission.

**§ 154.1035 Specific requirements for facilities that could reasonably be expected to cause significant and substantial harm to the environment.**

(a) *Introduction and plan content.* This section of the plan must include facility and plan information as follows:

(1) The facility's name, street address, city, county, state, ZIP code, facility telephone number, and telefacsimile number, if so equipped. Include mailing address if different from street address.

(2) The facility's location described in a manner that could aid both a reviewer and a responder in locating the specific facility covered by the plan, such as, river mile or location from a known landmark that would appear on a map or chart.

(3) The name, address, and procedures for contacting the facility's owner or operator on a 24-hour basis.

(4) A table of contents.

(5) During the period that the submitted plan does not have to conform to the format contained in this subpart, a cross index, if appropriate.

(6) A record of change(s) to record information on plan updates.

(b) *Emergency Response Action Plan.* This section of the plan must be organized in the subsections described in this paragraph:

(1) *Notification procedures.* (i) This subsection must contain a prioritized list identifying the person(s), including name, telephone number, and their role in the plan, to be notified of a discharge or substantial threat of a discharge of oil. The telephone number need not be provided if it is listed separately in the list of contacts required in the plan. This Notification Procedures listing must include—

(A) Facility response personnel, the spill management team, oil spill removal organizations, and the qualified individual(s) and the designated alternate(s); and

(B) Federal, State, or local agencies, as required.

(ii) This subsection must include a form, such as that depicted in Figure 1, which contains information to be provided in the initial and follow-up notifications to Federal, State, and local agencies. The form shall include notification of the National Response Center as required in part 153 of this chapter. Copies of the form also must be placed at the location(s) from which notification may be made. The initial notification form must include space for the information contained in Figure 1. The form must contain a prominent statement that initial notification must not be delayed pending collection of all information.

FIGURE 1.—INFORMATION ON DISCHARGE*

[Involved Parties]

| (A) Reporting party | (B) Suspected responsible party |
|---|---|
| Name<br>Phones ( ) –<br>Company<br>Position<br>Address<br>Address<br><br><br><br><br>City<br>State<br>Zip | Name<br>Phones ( ) –<br>Company<br>Organization Type:<br>Private citizen<br>Private enterprise<br>Public utility<br>Local government<br>State government<br>Federal government<br>City<br>State<br>Zip |

*It is not necessary to wait for all information before calling NRC. National Response Center—1–800–424–8802.

Were materials Discharged (Y/N)?
Calling for Responsible Party (Y/N)

**Incident Description**

Source and/or Cause of Incident

Date - - Time:
Cause

Incident Address/Location Nearest City
Distance from City
Storage Tank Container Type—Above ground (Y/N) Below ground (Y/N) Unknown

**Facility Capacity**

Tank Capacity
Latitude Degrees
Longitude Degrees
Mile Post or River Mile

**Materials**

Discharge Unit of Quantity Measure Discharged Material Quantity in Water

| Response Action |
|---|
| Actions Taken to Correct or Mitigate Incident |
| **Impact** |
| Number of Injuries Number of Fatalities<br>Were there Evacuations (Y/N/U)? Number Evacuated<br>Was there any Damage (Y/N/U)? Damage in Dollars |
| **Additional Information** |
| Any information about the Incident not recorded elsewhere in the report |
| **Caller Notifications** |
| USCG EPA State Other |

*(2) Facility's spill mitigation procedures.* (i) This subsection must describe the volume(s) and oil groups that would be involved in the—

(A) Average most probable discharge from the MTR facility;

(B) Maximum most probable discharge from the MTR facility;

(C) Worst case discharge from the MTR facility; and

(D) Where applicable, the worst case discharge from the non-transportation-related facility. This must be the same volume provided in the response plan for the non-transportation-related facility.

(ii) This subsection must contain prioritized procedures for facility personnel to mitigate or prevent any discharge or substantial threat of a discharge of oil resulting from operational activities associated with internal or external facility transfers including specific procedures to shut down affected operations. Facility personnel responsible for performing specified procedures to mitigate or prevent any discharge or potential discharge shall be identified by job title. A copy of these procedures shall be maintained at the facility operations center. These procedures must address actions to be taken by facility personnel in the event of a discharge, potential discharge, or emergency involving the following equipment and scenarios:

(A) Failure of manifold, mechanical loading arm, other transfer equipment, or hoses, as appropriate;

(B) Tank overfill;

(C) Tank failure;

(D) Piping rupture;

(E) Piping leak, both under pressure and not under pressure, if applicable;

(F) Explosion or fire; and

(G) Equipment failure (e.g. pumping system failure, relief valve failure, or other general equipment relevant to operational activities associated with internal or external facility transfers.)

(iii) This subsection must contain a listing of equipment and the responsibilities of facility personnel to mitigate an average most probable discharge.

(3) *Facility's response activities.* (i) This subsection must contain a description of the facility personnel's responsibilities to initiate a response and supervise response resources pending the arrival of the qualified individual.

(ii) This subsection must contain a description of the responsibilities and authority of the qualified individual and alternate as required in § 154.1026.

(iii) This subsection must describe the organizational structure that will be used to manage the response actions. This structure must include the following functional areas.

(A) Command and control;

(B) Public information;

(C) Safety;

(D) Liaison with government agencies;

(E) Spill Operations;

(F) Planning;

(G) Logistics support; and

(H) Finance.

(iv) This subsection must identify the oil spill removal organizations and the spill management team to:

(A) Be capable of providing the following response resources:

(*1*) Equipment and supplies to meet the requirements of §§ 154.1045, 154.1047 or subparts H or I of this part, as appropriate; and

(*2*) Trained personnel necessary to continue operation of the equipment and staff of the oil spill removal organization and spill management team for the first 7 days of the response.

(B) This section must include job descriptions for each spill management team member within the organizational structure described in paragraph (b)(3)(iii) of this section. These job descriptions should include the responsibilities and duties of each spill management team member in a response action.

(v) For mobile facilities that operate in more than one COTP zone, the plan must identify the oil spill removal organization and the spill management team in the applicable geographic-specific appendix. The oil spill removal organization(s) and the spill management team discussed in paragraph (b)(3)(iv)(A) of this section must be included for each COTP zone in which the facility will handle, store, or transport oil in bulk.

(4) *Fish and wildlife and sensitive environments.* (i) This section of the plan must identify areas of economic importance and environmental sensitivity, as identified in the ACP, which are potentially impacted by a worst case discharge. ACPs are required under section 311(j)(4) of the FWPCA to identify fish and wildlife and sensitive environments. The applicable ACP shall be used to designate fish and wildlife and sensitive environments in the plan. Changes to the ACP regarding fish and wildlife and sensitive environments shall be included in the annual update of the response plan, when available.

(ii) For a worst case discharge from the facility, this section of the plan must—

(A) List all fish and wildlife and sensitive environments identified in the ACP which are potentially impacted by a discharge of persistent oils, non-persistent oils, or non-petroleum oils.

(B) Describe all the response actions that the facility anticipates taking to protest these fish and wildlife and sensitive environments.

(C) Contain a map or chart showing the location of those fish and wildlife and sensitive environments which are potentially impacted. The map or chart shall also depict each response action that the facility anticipates taking to protect these areas. A legend of

activities must be included on the map page.

(iii) For a worst case discharge, this section must identify appropriate equipment and required personnel, available by contract or other approved means as described in § 154.1028, to protect fish and wildlife and sensitive environments which fall within the distances calculated using the methods outlined in this paragraph as follows:

(A) Identify the appropriate equipment and required personnel to protect all fish and wildlife and sensitive environments in the ACP for the distances, as calculated in paragraph (b)(4)(iii)(B) of this section, that the persistent oils, non-persistent oils, or non-petroleum oils are likely to travel in the noted geographic area(s) and number of days listed in Table 2 of appendix C of this part;

(B) Calculate the distances required by paragraph (b)(4)(iii)(A) of this section by selecting one of the methods described in this paragraph;

(*1*) Distances may be calculated as follows:

(*i*) For persistent oils and non-petroleum oils discharged into non-tidal waters, the distance from the facility reached in 48 hours at maximum current.

(*ii*) For persistent and non-petroleum oils discharged into tidal waters, 15 miles from the facility down current during ebb tide and to the point of maximum tidal influence or 15 miles, whichever is less, during flood tide.

(*iii*) For non-persistent oils discharged into non-tidal waters, the distance from the facility reached in 24 hours at maximum current.

(*iv*) For non-persistent oils discharged into tidal waters, 5 miles from the facility down current during ebb tide and to the point of maximum tidal influence or 5 miles, whichever is less, during flood tide.

(*2*) A spill trajectory or model may be substituted for the distances calculated under paragraph (b)(4)(iii)(B)(*l) of this section.* The spill trajectory or model must be acceptable to the COTP.

(*3*) The procedures contained in the Environmental Protection's Agency's regulations on oil pollution prevention for non-transportation-related onshore facilities at 40 CFR part 112, appendix C, Attachment C–III may be substituted for the distances listed in non-tidal and tidal waters; and

(C) Based on historical information or a spill trajectory or model, the COTP may require the additional fish and wildlife and sensitive environments also be protected.

(5) *Disposal Plan.* This subsection must describe any actions to be taken or procedures to be used to ensure that all recovered oil and oil contaminated debris produced as a result of any discharge are disposed according to Federal, state, or local requirements.

(c) *Training and exercises.* This section must be divided into the following two subsections:

(1) *Training procedures.* This subsection must describe the training procedures and programs of the facility owner or operator to meet the requirements in § 154.1050.

(2) *Exercise procedures.* This subsection must describe the exercise program to be carried out by the facility owner or operator to meet the requirements in § 154.1055.

(d) *Plan review and update procedures.* This section must address the procedures to be followed by the facility owner or operator to meet the requirements of § 154.1065 and the procedures to be followed for any post-discharge review of the plan to evaluate and validate its effectiveness.

(e) *Appendices.* This section of the response plan must include the appendices described in this paragraph.

(1) *Facility-specific information.* This appendix must contain a description of the facility's principal characteristics.

(i) There must be a physical description of the facility including a plan of the facility showing the mooring areas, transfer locations, control stations, locations of safety equipment, and the location and capacities of all piping and storage tanks.

(ii) The appendix must identify the sizes, types, and number of vessels that the facility can transfer oil to or from simultaneously.

(iii) The appendix must identify the first valve(s) on facility piping separating the transportation-related portion of the facility from the non-transportation-related portion of the facility, if any. For piping leading to a manifold located on a dock serving tank vessels, this valve is the first valve inside the secondary containment required by 40 CFR part 112.

(iv) The appendix must contain information on the oil(s) and hazardous material handled, stored, or transported at the facility in bulk. A material safety data sheet meeting the requirements of 29 CFR 1910.1200, 33 CFR 154.310(a)(5) or an equivalent will meet this requirement. This information can be maintained separately providing it is readily available and the appendix identifies its location. This information must include—

(A) The generic or chemical name;

(B) A description of the appearance and odor;

(C) The physical and chemical characteristics;

(D) The hazards involved in handling the oil(s) and hazardous materials. This shall include hazards likely to be encountered if the oil(s) and hazardous materials come in contact as a result of a discharge; and

(E) A list of firefighting procedures and extinguishing agents effective with fires involving the oil(s) and hazardous materials.

(v) The appendix may contain any other information which the facility owner or operator determines to be pertinent to an oil spill response.

(2) *List of contacts.* This appendix must include information on 24-hour contact of key individuals and organizations. If more appropriate, this information may be specified in a geographic-specific appendix. The list must include—

(i) The primary and alternate qualified individual(s) for the facility;

(ii) The contact(s) identified under paragraph (b)(3)(iv) of this section for activation of the response resources; and

(iii) Appropriate Federal, State, and local officials.

(3) *Equipment list and records.* This appendix must include the information specified in this paragraph.

(i) The appendix must contain a list of equipment and facility personnel required to respond to an average most probable discharge, as defined in § 154.1020. The appendix must also list the location of the equipment.

(ii) The appendix must contain a detailed listing of all the major equipment identified in the plan as belonging to an oil spill removal organization(s) that is available, by contract or other approved means as described in § 154.1028(a), to respond to a maximum most probable or worst case discharge, as defined in § 154.1020. The detailed listing of all major equipment may be located in a separate document referenced by the plan. Either the appendix or the separate document referenced in the plan must provide the location of the major response equipment.

(iii) It is not necessary to list response equipment from oil spill removal organization(s) when the organization has been classified by the Coast Guard and their capacity has been determined to equal or exceed the response capability needed by the facility. For oil spill removal organization(s) classification by the Coast Guard, the classified must be noted in this section of the plan. When it is necessary for the appendix to contain a listing of response equipment, it shall include all of the following items that are identified in the

response plan: Skimmers; booms; dispersant application, in-situ burning, bioremediation equipment and supplies, and other equipment used to apply other chemical agents on the NCP Product Schedule (if applicable); communications, firefighting, and beach cleaning equipment; boats and motors; disposal and storage equipment; and heavy equipment. The list must include for each piece of equipment—

(A) The type, make, model, and year of manufacture listed on the nameplate of the equipment;

(B) For oil recovery devices, the effective daily recovery rate, as determined using section 6 of Appendix C of this part;

(C) For containment boom, the overall boom height (draft and freeboard) and type of end connectors;

(D) The spill scenario in which the equipment will be used for or which it is contracted;

(E) The total daily capacity for storage and disposal of recovered oil;

(F) For communication equipment, the type and amount of equipment intended for use during response activities. Where applicable, the primary and secondary radio frequencies must be specified.

(G) Location of the equipment; and

(H) The date of the last inspection by the oil spill removal organization(s).

(4) *Communications plan.* This appendix must describe the primary and alternate method of communication during discharges, including communications at the facility and at remote locations within the areas covered by the response plan. The appendix may refer to additional communications packages provided by the oil spill removal organization. This may reference another existing plan or document.

(5) *Site-specific safety and health plan.* This appendix must describe the safety and health plan to be implemented for any response location(s). It must provide as much detailed information as is practicable in advance of an actual discharge. This appendix may reference another existing plan requiring under 29 CFR 1910.120.

(6) *List of acronyms and definitions.* This appendix must list all acronyms used in the response plan including any terms or acronyms used by Federal, State, or local governments and any operational terms commonly used at the facility. This appendix must include all definitions that are critical to understanding the response plan.

**§ 154.1040 Specific requirements for facilities that could reasonably be expected to cause substantial harm to the environment.**

(a) The owner or operator of a facility that, under § 154.1015, could reasonably be expected to cause substantial harm to the environment, shall submit a response plan that meets the requirements of § 154.1035, except as modified by this section.

(b) The facility's response activities section of the response plan need not list the facility or corporate organizational structure that will be used to manage the response, as required by § 154.1035(b)(3)(iii).

(c) The owner or operator of a facility must ensure the availability of response resources required to be identified in § 154.1035(b)(3)(iv) by contract or other approved means described in § 154.1028.

(d) A facility owner or operator must have at least 200 feet of containment boom and the means of deploying and anchoring the boom available at the spill site within 1 hour of the detection of a spill to respond to the average most probable discharge in lieu of the quantity of containment boom specified in § 154.1045(c)(1). Based on site-specific or facility-specific information, the COTP may specify that additional quantities of containment boom are available within one hour. In addition, there must be adequate sorbent material for initial response to an average most probable discharge. If the facility is a fixed facility, the containment boom and sorbent material must be located at the facility. If the facility is a mobile facility, the containment boom and sorbent must be available locally and be at the site of the discharge within 1 hour of its discovery.

**§ 154.1041 Specific response information to be maintained on mobile MTR facilities.**

(a) Each mobile MTR facility must carry the following information as contained in the response plan when performing transfer operations:

(1) A description of response activities for a discharge which may occur during transfer operations. This may be a narrative description or a list of procedures to be followed in the event of a discharge.

(2) Identity of response resources to respond to a discharge from the mobile MTR facility.

(3) List of the appropriate persons and agencies (including the telephone numbers) to be contacted in regard to a discharge and its handling, including the National Response Center.

(b) The owner or operator of the mobile facility must also retain the information in this paragraph at the principal place of business.

**§ 154.1045 Response plan development and evaluation criteria for facilities that handle, store, or transport Group I through Group IV petroleum oils.**

(a) The owner or operator of a facility that handles, stores, or transports Group I through Group IV petroleum oils shall use the criteria in this section to evaluate response resources identified in the response plan for the specified operating environment.

(1) The criteria in Table 1 of appendix C of this part are to be used solely for identification of appropriate equipment in a response plan. These criteria reflect conditions used for planning purposes to select mechanical response equipment and are not conditions that would limit response actions or affect normal facility operations.

(2) The response resources must be evaluated considering limitations for the COTP zones in which the facility operates, including but not limited to—

(i) Ice conditions;

(ii) Debris;

(iii) Temperature ranges;

(iv) Weather-related visibility; and

(v) Other appropriate environmental conditions as determined by the COTP.

(3) The COTP may reclassify a specific body of water or location within the COTP zone. Any reclassifications will be identified by the COTP in the applicable ACP. Reclassifications may be to—

(i) A more stringent operating environment if the prevailing wave conditions exceed the significant wave height criteria during more than 35 percent of the year; or

(ii) A less stringent operating environment if the prevailing wave conditions do not exceed the significant wave height criteria for the less stringent operating environment during more than 35 percent of the year.

(b) Response equipment must—

(1) Meet or exceed the operating criteria listed in Table 1 of appendix C of this part;

(2) Function in the applicable operating environment; and

(3) Be appropriate for the petroleum oil carried.

(c) The response plan for a facility that handles, stores, or transports Group I through Group IV petroleum oils must identify response resources that are available, by contract or other approved means as described in § 154.1028(a)(1)(4), to respond to the facility's average most probable discharge. The response resources must include, at a minimum—

(1) 1,000 feet of containment boom or two times the length of the largest vessel

that regularly conducts petroleum oil transfers to or from the facility, whichever is greater, and the means of deploying and anchoring the boom available at the spill site within 1 hour of the detection of a spill; and

(2) Oil recovery devices and recovered oil storage capacity capable of being at the spill site within 2 hours of the discovery of a petroleum oil discharge from a facility.

(d) The response plan for a facility that handles, stores, or transports Group I through Group IV petroleum oils must identify response resources that are available, by contract or other approved means as described in § 154.1028(a)(1)(4), to respond to a discharge up to the facility's maximum most probable discharge volume.

(1) The response resources must include sufficient containment boom, oil recovery devices, and storage capacity for any recovery of up to the maximum most probable discharge planning volume, as contained in appendix C.

(2) The response resources must be appropriate for each group of petroleum oil identified in § 154.1020 that is handled, stored, or transported by the facility.

(3) These response resources must be positioned such that they can arrive at the scene of a discharge within the following specified times:

(i) The equipment identified in paragraphs (c)(1) and (c)(2) of this section or in § 154.1040(d) must arrive within the times specified in those paragraphs or that section, as appropriate.

(ii) In higher volume port areas and the Great Lakes, response resources must be capable of arriving on scene within 6 hours of the discovery of an petroleum oil discharge from a facility.

(iii) In all other locations, response resources must be capable of arriving on scene within 12 hours of the discovery of a petroleum oil discharge from a facility.

(4) The COTP may determine that mobilizing response resources to an area beyond the response times indicated in this paragraph invalidates the response plan. In this event, the COTP may impose additional operational restrictions (e.g., limitations on the number of transfers at a facility), or, at the COTP's discretion, the facility may operate with temporarily modified response plan development and evaluation criteria (e.g., modified response times, alternate response resources, etc.).

(e) The response plan for a facility that handles, stores, or transports Group I through Group IV petroleum oils must identify the response resources that are available, by contract or other approved means as described in § 154.1028(a)(1)(4), to respond to the worst case discharge volume of petroleum oil to the maximum extent practicable.

(1) The location of these response resources must be suitable to meet the response times identified in paragraph (f) of this section for the applicable geographic area(s) of operation and response tier.

(2) The response resources must be appropriate for—

(i) The volume of the facility's worst case discharge;

(ii) Group(s) of petroleum oil as identified in § 154.1020 that are handled, stored, or transported by the facility; and

(iii) The geographic area(s) in which the facility operates.

(3) The response resources must include sufficient boom, oil recovery devices, and storage capacity to recover the worst case discharge planning volumes.

(4) The guidelines in appendix C of this part must be used for calculating the quantity of response resources required to respond at each tier to the worst case discharge to the maximum extent practicable.

(5) When determining response resources necessary to meet the requirements of this section, a portion of those resources must be capable of use in close-to-shore response activities in shallow water. The following percentages of the response equipment identified for the applicable geographic area must be capable of operating in waters of 6 feet or less depth.

(i) Offshore—10 percent.

(ii) Nearshore/inland/Great Lakes/rivers and canals—20 percent.

(6) The COTP may determine that mobilizing response resources to an area beyond the response times indicated in this paragraph invalidates the response plan. In this event, the COTP may impose additional operational restrictions (e.g., limitations on the number of transfers at a facility), or, at the COTP's discretion, the facility may be permitted to operate with temporarily modified response plan development and evaluation criteria (e.g., modified response times, alternate response resources, etc.).

(f) Response equipment identified in a response plan for a facility that handles, stores, or transports Group I through Group IV petroleum oils must be capable of arriving on scene within the times specified in this paragraph for the applicable response tier in a higher volume port area, Great Lakes, and in other areas. Response times for these tiers from the time of discovery of a discharge are—

| | Tier 1 (hrs.) | Tier 2 (hrs.) | Tier 3 (hrs.) |
|---|---|---|---|
| Higher volume port area (except for a TAPAA facility located in Prince William Sound, see § 154.1135) .... | 6 | 30 | 54 |
| Great Lakes ..... | 12 | 36 | 60 |
| All other river and canal, inland, nearshore, and offshore areas ... | 12 | 36 | 60 |

(g) For the purposes of arranging for response resources for a facility that handles, stores, or transports Group I through Group IV petroleum oils, by contract or other approved means as described in § 154.1028(a)(1)–(4), response equipment identified for Tier 1 plan credit must be capable of being mobilized and en route to the scene of a discharge within 2 hours of notification. The notification procedures identified in the plan must provide for notification and authorization of mobilization of identified Tier 1 response resources—

(1) Either directly or through the qualified individual; and

(2) Within 30 minutes of a discovery of a discharge or substantial threat of discharge.

(h) Response resources identified for Tier 2 and Tier 3 plan credit must be capable of arriving on scene within the time specified for the applicable tier.

(i) The response plan for a facility that is located in any environment with year-round preapproval for use of dispersants and that handles, stores, or transports Group II or III persistent petroleum oils may request a credit for up to 25 percent of the on-water recovery capability set forth by this part. To receive this credit, the facility owner or operator must identify in the plan and ensure, by contract or other approved means as described in § 154.1028(a)(1)–(4), the availability of specified resources to apply the dispersants and to monitor their effectiveness. The extent of the credit will be based on the volumes of the dispersant available to sustain operations at the manufacturers' recommend dosage rates. Resources identified for plan credit should be capable of being on scene within 12 hours of a discovery of a discharge. Identification of these resources does not imply that they will be authorized for use. Actual authorization for use

during a spill response will be governed by the provisions of the NCP and the applicable ACP.

(j) A response plan for a facility that handles, stores, or transports Group I through Group IV petroleum oils must identify response resources with firefighting capability. The owner or operator of a facility that does not have adequate firefighting resources located at the facility or that can not rely on sufficient local firefighting resources must identify and ensure, by contract or other approved means as described in § 154.1028(a)(1)–(4), the availability of adequate firefighting resources. The response plan must also identify an individual located at the facility to work with the fire department for petroleum oil fires. This individual shall also verify that sufficient well-trained firefighting resources are available within a reasonable time to respond to a worst case discharge. The individual may be the qualified individual as defined in § 154.1020 and identified in the response plan or another appropriate individual located at the facility.

(k) The response plan for a facility that handles, stores, or transports Groups I through IV petroleum oils must identify equipment and required personnel available, by contract or other approved means as described in § 154.1028(a) (1)–(4), to protect fish and wildlife and sensitive environments.

(1) Except as set out in paragraph (k)(2) of this section, the identified response resources must include the quantities of boom sufficient to protect fish and wildlife and sensitive environments as required by § 154.1035(b)(4).

(2) The resources and response methods identified in a facility response plan must be consistent with the required resources and response methods to be used in fish and wildlife and sensitive environments, contained in the appropriate ACP. Facility owners or operators shall ensure that their response plans are in accordance with the ACP in effect 6 months prior to initial plan submission or the annual plan review required under § 154.1065(a). Facility owners or operators are not required to, but may at their option, conform to an ACP which is less than 6 months old at the time of plan submission.

(l) The response plan for a facility that handles, stores, or transports Groups I through IV petroleum oils must identify an oil spill removal organization(s) with response resources that are available, by contract or other approved means as described in § 154.1028(a) (1)–(4), to effect a shoreline cleanup operation commensurate with the quantity of emulsified petroleum oil to be planned for in shoreline cleanup operations.

(1) Except as required in paragraph (l)(2) of this section, the shoreline cleanup response resources required must be determined as described in appendix C of this part.

(2) The resources and response methods identified in a facility response plan must be consistent with the required shoreline cleanup resources and methods contained in the appropriate ACP. Facility owners or operators shall ensure that their response plans are in accordance with the ACP in effect 6 months prior to initial plan submission or the annual plan review required under § 154.1065(a). Facility owners or operators are not required to, but may at their option, conform to an ACP which is less than 6 months old at the time of plan submission.

(m) Appendix C of this part describes the procedures to determine the maximum extent practicable quantity of response resources that must be identified and available, by contract or other approved means as described in § 154.1028(a) (1)–(4), for the maximum most probable discharge volume, and for each worst case discharge response tier.

(1) Included in appendix C of this part is a cap that recognizes the practical and technical limits of response capabilities that an individual facility owner or operator can be expected to contract for in advance.

(2) Table 5 in appendix C of this part lists the caps that apply in February 18, 1993, and February 18, 1998. Depending on the quantity and type of petroleum oil handled by the facility and the facility's geographic area of operations, the resource capability caps in this table may be reached. The owner or operator of a facility whose estimated recovery capacity exceeds the applicable contracting caps in Table 5 shall identify sources of additional equipment equal to twice the cap listed in Tiers 1, 2, and 3 or the amount necessary to reach the calculated planning volume, whichever is lower. The identified resources must be capable of arriving on scene not later than the Tier 1, 2, and 3 response times in this section. No contract is required. While general listings of available response equipment may be used to identify additional sources, a response plan must identify the specific sources, locations, and quantities of equipment that a facility owner or operator has considered in his or her planning. When listing Coast Guard classified oil spill removal organization(s) which have sufficient removal capacity to recover the volume above the response capability cap for the specific facility, as specified in Table 5 in appendix C of this part, it is not necessary to list specific quantities of equipment.

(n) The Coast Guard will initiate a review of cap increases and other requirements contained within this subpart that are scheduled to be phased in over time. Any changes in the requirements of this section will occur through a public notice and comment process.

(1) During this review, the Coast Guard will determine if the scheduled increase for February 1998 remains practicable, and will also establish a specific cap for 2003. The review will include but is not limited to—

(i) Increase in skimming efficiencies and design technology;

(ii) Oil tracking technology;

(iii) High rate response techniques;

(iv) Other applicable response technologies; and

(v) Increases in the availability of private response resources.

(2) All scheduled future requirements will take effect unless the Coast Guard determines that they are not practicable. Scheduled changes will be effective in February 1998 and 2003 unless the review of the additional requirements has not been completed by the Coast Guard. If this occurs, the additional requirements will not be effective until 90 days after publication of a Federal Register notice with the results of the review.

**§ 154.1047 Response plan development and evaluation criteria for facilities that handle, store, or transport Group V petroleum oils.**

(a) An owner or operator of a facility that handles, stores, or transports Group V petroleum oils must provide information in his or her response plan that identifies—

(1) Procedures and strategies for responding to a worst case discharge of Group V petroleum oils to the maximum extent practicable; and

(2) Sources of the equipment and supplies necessary to locate, recover, and mitigate such a discharge.

(b) An owner or operator of a facility that handles, stores, or transports Group V petroleum oil must ensure that any equipment identified in a response plan is capable of operating in the conditions expected in the geographic area(s) in which the facility operates using the criteria in Table 1 of appendix C of this part. When evaluating the operability of equipment, the facility owner or operator must consider limitations that are identified in the ACPs for the COTP

zones in which the facility operates, including—

(1) Ice conditions;

(2) Debris;

(3) Temperature ranges; and

(4) Weather-related visibility.

(c) The owner or operator of a facility that handles, stores, or transports Group V petroleum oil must identify the response resources that are available by contract or other approved means as described in § 154.1028. The equipment identified in a response plan must include—

(1) Sonar, sampling equipment, or other methods for locating the petroleum oil on the bottom or suspended in the water column;

(2) Containment boom, sorbent boom, silt curtains, or other methods for containing the petroleum oil that may remain floating on the surface or to reduce spreading on the bottom;

(3) Dredges, pumps, or other equipment necessary to recover petroleum oil from the bottom and shoreline;

(4) Equipment necessary to assess the impact of such discharges; and

(5) Other appropriate equipment necessary to respond to a discharge involving the type of petroleum oil handled, stored, or transported.

(d) Response resources identified in a response plan for a facility that handles, stores, or transports Group V petroleum oils under paragraph (c) of this section must be capable of being at the spill site within 24 hours of discovery of a discharge.

(e) A response plan for a facility that handles, stores, or transports Group V petroleum oils must identify response resources with firefighting capability. The owner or operator of a facility that does not have adequate firefighting resources located at the facility or that can not rely on sufficient local firefighting resources must identity and ensure, by contract or other approved means as described in § 154.1028, the availability of adequate firefighting resources. The response plan must also identify an individual located at the facility to work with the fire department for petroleum oil fires. This individual shall also verify that sufficient well-trained firefighting resources are available within a reasonable response time to a worst case scenario. The individual may be the qualified individual as defined in § 154.1020 and identified in the response plan or another appropriate individual located at the facility.

**§ 154.1050 Training.**

(a) A response plan submitted to meet the requirements of §§ 154.1035 or 154.1040, as appropriate, must identify the training to be provided to each individual with responsibilities under the plan. A facility owner or operator must identify the method to be used for training any volunteers or casual laborers used during a response to comply with the requirements of 29 CFR 1910.120.

(b) A facility owner or operator shall ensure the maintenance of records sufficient to document training of facility personnel; and shall make them available for inspection upon request by the U.S. Coast Guard. Records for facility personnel must be maintained at the facility for 3 years.

(c) Where applicable, a facility owner or operator shall ensure that an oil spill removal organization identified in a response plan to meet the requirements of this subpart maintains records sufficient to document training for the organization's personnel and shall make them available for inspection upon request by the facility's management personnel, the qualified individual, and U.S. Coast Guard. Records must be maintained for 3 years following completion of training.

(d) The facility owner or operator remains responsible for ensuring that all private response personnel are trained to meet the Occupational Safety and Health Administration (OSHA) standards for emergency response operations in 29 CFR 1910.120.

**§ 154.1055 Exercises.**

(a) A response plan submitted by an owner or operator of an MTR facility must include an exercise program containing both announced and unannounced exercises. The following are the minimum exercise requirements for facilities covered by this subpart:

(1) Qualified individual notification exercises (quarterly).

(2) Spill management team tabletop exercises (annually). In a 3-year period, at least one of these exercises must include a worst case discharge scenario.

(3) Equipment deployment exercises:

(i) Semiannually for facility owned and operated equipment.

(ii) Annually for oil spill removal organization equipment.

(4) Emergency procedures exercises (optional).

(5) Annually, at least one of the exercises listed in § 154.1055(a)(2) through (4) must be unannounced. Unannounced means the personnel participating in the exercise must not be advised in advance, of the exact date, time and scenario of the exercise.

(6) The facility owner or operator shall design the exercise program so that all components of the response plan are exercised at least once every 3 years. All of the components do not have to be exercised at one time; they may be exercised over the 3-year period through the required exercises or through an Area exercise.

(b) A facility owner or operator shall participate in unannounced exercises, as directed by the COTP. The objectives of the unannounced exercises will be to test notifications and equipment deployment for response to the average most probable discharge. After participating in an unannounced exercise directed by a COTP, the owner or operator will not be required to participate in another COTP initiated unannounced exercise for at least 3 years from the date of the exercise.

(c) A facility owner or operator shall participate in Area exercises as directed by the applicable On-Scene Coordinator. The Area exercises will involve equipment deployment to respond to the spill scenario developed by the Exercise Design Team, of which the facility owner or operator will be a member. After participating in an Area exercise, a facility owner or operator will not be required to participate in another Area exercise for at least 6 years.

(d) The facility owner or operator shall ensure that adequate records of all required exercises are maintained at the facility for 3 years. Records shall be made available to the Coast Guard upon request.

(e) The response plan submitted to meet the requirements of this subpart must specify the planned exercise program. The plan must detail the exercise program, including the types of exercises, frequency, scope, objectives and the scheme for exercising the entire response plan every 3 years.

(f) Compliance with the National Preparedness for Response Exercise Program (PREP) Guidelines will satisfy the facility response plan exercise requirements.

**§ 154.1057 Inspection and maintenance of response resources.**

(a) A facility owner or operator required to submit a response plan under this part must ensure that—

(1) Containment booms, skimmers, vessels, and other major equipment listed or referenced in the plan are periodically inspected and maintained in good operating condition, in accordance with manufacturer's recommendations, and best commercial practices; and

(2) All inspection and maintenance is documented and that these records are maintained for 3 years.

(b) For equipment which must be inspected and maintained under this section the Coast Guard may—

(1) Verify that the equipment inventories exist as represented;

(2) Verify the existences of records required under this section;

(3) Verify that the records of inspection and maintenance reflect the actual condition of any equipment listed or referenced; and

(4) Inspect and require operational tests of equipment.

(c) This section does not apply to containment booms, skimmers, vessels, and other major equipment listed or referenced in the plan and ensured available from an oil spill removal organization through the written consent required under § 154.1028(a)(5).

**§ 154.1060 Submission and approval procedures.**

(a) The owner or operator of a facility to which this subpart applies shall submit one copy of a facility response plan meeting the requirements of this subpart to the COTP for initial review and, if appropriate, approval.

(b) The owner or operator of a facility to which this subpart applies shall include a statement certifying that the plan meets the applicable requirements of subparts F, G, H, and I of this part, as appropriate.

(c) For an MTR facility that is located in the inland response zone where the EPA Regional Administrator is the predesignated Federal On-Scene Coordinator, the COTP may consult with the EPA Federal On-Scene Coordinator prior to any final approval.

(d) For an MTR facility identified in § 154.1015(c) of this subpart that is also required to prepare a response plan under 40 CFR part 112, if the COTP determines that the plan meets all applicable requirements and the EPA Regional Administrator raises no objection to the response plan contents, the COTP will notify the facility owner or operator in writing that the plan is approved.

(e) The plan will be valid for a period of up to 5 years. The facility owner or operator must resubmit an updated plan every 5 years as follows:

(1) For facilities identified in only § 154.1015(b) of this subpart, the 5-year period will commence on the date the plan is submitted to the COTP.

(2) For facilities identified in § 154.1015(c) of this subpart, the 5-year period will commence on the date the COTP approves the plan.

(3) All resubmitted response plans shall be accompanied by a cover letter containing a detailed listing of all revisions to the response plan.

(f) For an MTR facility identified in § 154.1015(c)(2) the COTP will notify the facility owner or operator in writing that the plan is approved.

(g) If a COTP determines that a plan does not meet the requirements of this subpart either upon initial submission or upon 5-year resubmission, the COTP will return the plan to the facility owner or operator along with an explanation of the response plan's deficiencies. The owner or operator must correct any deficiencies in accordance with § 154.1070 and return the plan to the COTP within the time specified by the COTP in the letter describing the deficiencies.

(h) The facility owner or operator and the qualified individual and the alternative qualified individual shall each maintain a copy of the most current response plan submitted to the COTP. One copy must be maintained at the facility in a position where the plan is readily available to persons in charge of conducting transfer operations.

**§ 154.1065 Plan review and revision procedures.**

(a) A facility owner or operator must review his or her response plan(s) annually. This review shall incorporate any revisions to the plan, including listings of fish and wildlife and sensitive environments identified in the ACP in effect 6 months prior to plan review.

(1) For an MTR facility identified in § 154.1015(c) of this subpart as a ''significant and substantial harm facility,'' this review must occur within 1 month of the anniversary date of COTP approval of the plan. For an MTR facility identified in § 154.1015(b) of this subpart, as a ''substantial harm facility'' this review must occur within 1 month of the anniversary date of submission of the plan to the COTP.

(2) The facility owner or operator shall submit any revision(s) to the response plan to the COTP and all other holders of the response plan for information or approval, as appropriate.

(i) Along with the revisions, the facility owner or operator shall submit a cover letter containing a detailed listing of all revisions to the response plan.

(ii) If no revisions are required, the facility owner or operator shall indicate the completion of the annual review on the record of changes page.

(iii) The COTP will review the revision(s) submitted by the owner or operator and will give written notice to the owner or operator of any COTP objection(s) to the proposed revisions within 30 days of the date the revision(s) were submitted to the COTP. The revisions shall become effective not later than 30 days from their submission to the COTP unless the COTP indicates otherwise in writing as provided in this paragraph. If the COTP indicates that the revision(s) need to be modified before implementation, the owner or operator will modify the revision(s) within the time period set by the COTP.

(3) Any required revisions must be entered in the plan and noted on the record of changes page.

(b) The facility owner or operator shall submit revisions to a previously submitted or approved plan to the COTP and all other holders of the response plan for information or approval within 30 days, whenever there is—

(1) A change in the facility's configuration that significantly affects the information included in the response plan;

(2) A change in the type of oil (petroleum oil group) handled, stored, or transported that affects the required response resources;

(3) A change in the name(s) or capabilities of the oil spill removal organization required by § 154.1045;

(4) A change in the facility's emergency response procedures;

(5) A change in the facility's operating area that includes ports or geographic area(s) not covered by the previously approved plan. A facility may not operate in an area not covered in a plan previously submitted or approved, as appropriate, unless the revised plan is approved or interim operating approval is received under § 154.1025; or

(6) Any other changes that significantly affect the implementation of the plan.

(c) Except as required in paragraph (b) of this section, revisions to personnel and telephone number lists included in the response plan do not require COTP approval. The COTP and all other holders of the response plan shall be advised of these revisions and provided a copy of the revisions as they occur.

(d) The COTP may require a facility owner or operator to revise a response plan at any time as a result of a compliance inspection if the COTP determines that the response plan does not meet the requirements of this subpart or as a result of inadequacies noted in the response plan during an actual pollution incident at the facility.

**§ 154.1070 Deficiencies.**

(a) The cognizant COTP will notify the facility owner or operator in writing of any deficiencies noted during review of a response plan, drills observed by the Coast Guard, or inspection of equipment or records maintained in connection with this subpart.

(b) Deficiencies shall be corrected within the time period specified in the written notice provided by the COTP. The facility owner or operator who disagrees with a deficiency issued by the COTP may appeal the deficiency to the cognizant COTP within 7 days or the time specified by the COTP to correct the deficiency, whichever is less. This time commences from the date of receipt of the COTP notice. The owner or operator may request a stay from the COTP decision pending appeal in accordance with § 154.1075.

(c) If the facility owner or operator fails to correct any deficiencies or submit a written appeal, the COTP may invoke the provisions of § 154.1025 prohibiting the facility from storing, handling, or transporting oil.

**§ 154.1075 Appeal process.**

(a) Any owner or operator of a facility who desires to appeal the classification that a facility could reasonably be expected to cause substantial harm or significant and substantial harm to the environment, shall submit a written request to the cognizant COTP requesting review and reclassification by the COTP. The facility owner or operator shall identify those factors to be considered by the COTP. The factors to be considered by the COTP regarding reclassification of a facility include, but are not limited to, those listed in § 154.1016(b). After considering all relevant material presented by the facility owner or operator and any additional material available to the COTP, the COTP will notify the facility owner or operator of the decision on the reclassification of the facility.

(b) Any facility owner or operator directly affected by an initial determination or action of the COTP may submit a written request to the cognizant COTP requesting review and reconsideration of the COTP's decision or action. The facility owner or operator shall identify those factors to be considered by the COTP in making his or her decision on reconsideration.

(c) Within 10 days of the COTP's decision under paragraph (b) of this section, the facility owner or operator may appeal the decision of the COTP to the District Commander. This appeal shall be made in writing via the cognizant COTP to the District Commander of the district in which the office of the COTP is located.

(d) Within 30 days of the District Commander's decision, the facility owner or operator may formally appeal the decision of the District Commander. This appeal shall be submitted in writing to Commandant (G-MEP) via the District Commander.

(e) When considering an appeal, the COTP, District Commander, or Commandant may stay the effect of the decision or action being appealed pending the determination of the appeal.

3. Subpart G is revised to read as follows:

**Subpart G—Additional Response Plan Requirements for a Trans Alaska Pipeline Authorization Act (TAPAA) Facility Operating in Prince William Sound, Alaska**

§ 154.1110 Purpose and applicability.
154.1115 Definitions.
154.1120 Operating restrictions and interim operating authorization.
154.1125 Additional response plan requirements.
154.1130 Requirements for prepositioned response equipment.
154.1135 Response plan development and evaluation criteria.
154.1140 TAPAA facility contracting with a vessel.

## Subpart G—Additional Response Plan Requirements for a Trans-Alaska Pipeline Authorization Act (TAPAA) Facility Operating in Prince William Sound, Alaska

**§ 154.1110 Purpose and applicability.**

(a) This subpart establishes oil spill response planning requirements for a facility permitted under the Tans-Alaska Pipeline Authorization Act (TAPAA), in addition to the requirements of subpart F of this part. The requirements of this subpart are intended for use in developing response plans and identifying response resources during the planning process. They are not performance standards.

(b) The information required by this subpart must be included in the Prince William Sound facility-specific appendix to the facility response plan required by subpart F of this part.

**§ 154.1115 Definitions.**

In addition to the definitions in this section, the definitions in §§ 154.105 and 154.1020 apply to this subpart. As used in this subpart—

*Crude oil* means any liquid hydrocarbon mixture occurring naturally in the earth, whether or not treated to render it suitable for transportation, and includes crude oil from which certain distillate fractions may have been removed, and crude oil to which certain distillate fractions may have been added.

*Non-crude oil* means any oil other than crude oil.

*Prince William Sound* means all State and Federal waters within Prince William Sound, Alaska, including the approach to Hinchinbrook Entrance out to and encompassing Seal Rocks.

**§ 154.1120 Operating restrictions and interim operating authorization.**

(a) The owner or operator of a TAPAA facility may not operate in Prince William Sound, Alaska, unless the requirements of this subpart as well as § 154.1025 have been met. The owner or operator of a TAPAA facility shall certify to the COTP that he or she has provided, through an oil spill removal organization required by § 154.1125, the necessary response resources to remove, to the maximum extend practicable, a worst case discharge or a discharge of 200,000 barrels of oil, whichever is grater, in Prince William Sound.

(b) Coast Guard approval of a TAPAA facility response plan is effective only so long as the appropriate Regional Citizens Advisory Council(s) is funded pursuant to the requirements of section 5002(k) of the Oil Pollution Act of 1990 (Pub. L. 101–380; 104 Stat. 484, 550).

**§ 154.1125 Additional response plan requirements.**

(a) The owner or operator of a TAPAA facility shall include the following information in the Prince William Sound appendix to the response plan required by subpart F of this part:

(1) *Oil spill removal organization.* Identification of an oil spill removal organization that shall—

(i) Perform response activities;

(ii) Provide oil spill removal and containment training, including training in the operation of prepositioned equipment for personnel, including local residents and fishermen, from the following locations in Prince William Sound:

(A) Valdez;

(B) Tatitlek;

(C) Cordova;

(D) Whittier;

(E) Chenega; and

(F) Fish hatcheries located at Port San Juan, Main Bay, Esther Island, Cannery Creek, and Solomon Gulch.

(iii) Provide a plan for training, in addition to the personnel listed in paragraph (a)(1)(ii) of this section, sufficient numbers of trained personnel to remove, to the maximum extent practicable, a worst case discharge; and

(iv) Address the responsibilities required in § 154.1035(b)(3)(iii).

(2) *Exercises.* Identification of exercise procedures that must—

(i) Provide for two exercises of the oil spill removal organization each year that test the ability of the prepositioned equipment and trained personnel required under this subpart to perform effectively;

(ii) Consist of both announced and unannounced drills; and

(iii) Include design(s) for exercises that test either the entire appendix or individual components(s).

(3) *Testing, inspection, and certification.* Identification of a testing, inspecting, and certification program for the prepositioned response equipment required in § 154.1130 that must provide for—

(i) Annual testing and equipment inspection in accordance with the manufacturer's recommended procedures, to include—

(A) Start-up and running under load all electrical motors, pumps, power packs, air compressors, internal combustion engines, and oil recovery devices; and

(B) Removal for inspection of no less than one-third of required boom from storage annually, such that all boom will have been removed and inspected within a period of 3 years; and

(ii) Records of equipment tests and inspection.

(iii) Use of an independent entity to certify that the equipment is on-site and in good operating condition and that required tests and inspection have been preformed. The independent entity must have appropriate training and expertise to provide this certification.

(4) *Prepositioned response equipment.* Identification and location of the prepositioned response equipment required in § 154.1130 including the make, model, and effective daily recovery rate of each oil recovery resource.

(b) The owner or operator of a TAPAA facility shall submit to the COTP a schedule for the training and drills required by the geographic-specific appendix for Prince William Sound for the following calendar year.

(c) All records required by this section must be available for inspection by the COTP.

**§ 154.1130 Requirements for prepositioned response equipment.**

The owner or operator of a TAPAA facility shall provide the following prepositioned response equipment, located within Prince William Sound, in addition to that required by §§ 154.1035, 154.1045, or 154.1050:

(a) On-water recovery equipment with a minimum effective daily recovery rate of 30,000 barrels capable of being a scene within 2 hours of notification of a discharge.

(b) On-water storage capacity of 100,000 barrels for recovered oily material capable of being on scene within 2 hours of notification of a discharge.

(c) On-water recovery equipment with a minimum effective daily recovery rate of 40,000 barrels capable of being on scene within 18 hours of notification of discharge.

(d) On-water storage capacity of 300,000 barrels for recovered oily material capable of being on scene within 12 hours of notification of a discharge.

(e) On-water recovery devices and storage equipment located in communities at strategic locations.

(f) Equipment as identified below, for the locations identified in § 154.1125(a)(1)(ii) sufficient for the protection of the environment in these locations:

(1) Boom appropriate for the specific locations.

(2) Sufficient boats to deploy boom and sorbents.

(3) Sorbent materials.

(4) Personnel protective clothing and equipment.

(5) Survival equipment.

(6) First aid supplies.

(7) Buckets, shovels, and various other tools.

(8) Decontamination equipment.

(9) Shoreline cleanup equipment.

(10) Mooring equipment.

(11) Anchored buoys at appropriate locations to facilitate the positioning of defensive boom.

(12) Other appropriate removal equipment for the protection of the environment as identified by the COTP.

**§ 154.1135 Response plan development and evaluation criteria.**

The following response times must be used in determining the on scene arrival time in Prince William Sound for the response resources required by § 154.1045:

| | Tier 1 (hrs.) | Tier 2 (hrs.) | tier 3 (hrs.) |
|---|---|---|---|
| Prince William Sound Area ... | 12 | 24 | 36 |

**§ 154.1140 TAPAA facility contracting with a vessel.**

The owner or operator of a TAPAA facility may contract with a vessel owner or operator to meet some of all of the requirements of subpart G of part 155 of this chapter. The extent to which these requirements are met by the contractual arrangement will be determined by the COTP.

4. Subpart H, consisting of §§ 154.1210 through 154.1228, is added to read as follows:

**Subpart H—Response Plans for Animal Fats and Vegetable Oils Facilities**

Sec.

154.1210 Purpose and applicability.
154.1220 Response plan submission requirements.
154.1225 Response plan development and evaluation criteria for facilities that handle, store, or transport animal fats and vegetable oils.
154.1228 Methods of ensuring the availability of response resources by contract or other approved means.

## Subpart H—Response Plans for Animal Fats and Vegetable Oils Facilities

**§ 154.1210 Purpose and applicability.**

This subpart establishes oil spill response planning requirements for an owner or operator of a facility that handles, stores, or transports animal fats and vegetable oils. The requirements of this subpart are intended for use in developing response plans and identifying response resources during the planning process. They are not performance standards.

**§ 154.1220 Response plan submission requirements.**

An owner or operator of a facility that handles, stores, or transports animal fats and vegetable oils shall submit a response plan in accordance with the requirements of this subpart, and with all sections of subpart F of this part, except §§ 154.1045 and 154.1047, which apply to petroleum oils.

**§ 154.1225 Response plan development and evaluation criteria for facilities that handle, store, or transport animal fats and vegetable oils.**

(a) An owner or operator of a facility that handles, stores, or transports animal fats and vegetable oils must provide information in his or her plan that identifies—

(1) Procedures and strategies for responding to a worst case discharge of animal fats and vegetable oils to the maximum extent practicable; and

(2) Sources of the equipment and supplies necessary to locate, recover, and mitigate such a discharge.

(b) An owner or operator of a facility that handles, stores, or transports animal fats and vegetable oils must ensure that any equipment identified in a response plan is capable of operating in the conditions expected in the geographic area(s) in which the facility operates using the criteria in section 2 and Table 1 of appendix C of this part. When evaluating the operability of equipment, the facility owner or operator must consider limitations that are identified in the ACPs for the COTP zone in which the facility is located, including—

(1) Ice conditions;

(2) Debris;

(3) Temperature ranges; and

(4) Weather-related visibility.

(c) The owner or operator of a facility that handles, stores, or transports animal fats and vegetable oils must identify the response resources that are available by contract or other means as described in § 154.1228(a). The equipment identified in a response plan must include—

(1) Containment boom, sorbent boom, or other methods for containing oil floating on the surface or to protect shorelines from impact;

(2) Oil recovery devices appropriate for the type of animal fats or vegetable oils handled; and

(3) Other appropriate equipment necessary to respond to a discharge involving the type of oil handled.

(d) Response resources identified in a response plan under paragraph (c) of this section must be capable of commencing an effective on-scene response within the times specified in this paragraph for the applicable operating area:

| | Tier 1 (hrs.) | Tier 2 | Tier 3 |
|---|---|---|---|
| Higher volume port area ..... | 6 | N/A | N/A |
| Great Lakes ..... | 12 | N/A | N/A |
| All other river and canal, inland, nearshore, and offshore areas ... | 12 | N/A | N/A |

(e) A response plan for a facility that handles, stores, or transports animal fats and vegetable oils must identify response resources with firefighting capability. The owner or operator of a facility that does not have adequate firefighting resources located at the facility or that can not rely on sufficient local firefighting resources must identify and ensure, by contract or other approved means as described in § 154.1228(a), the availability of adequate firefighting resources. The response plan must also identify an individual located at the facility to work with the fire department on animal fats and vegetable oil fires. This individual shall also verify that sufficient well-trained firefighting resources are available within a reasonable response time to a worst case scenario. The individual may be the qualified individual as defined in § 154.1020 and identified in the response plan or another appropriate individual located at the facility.

(f) The response plan for a facility that is located in any environment with year-round preapproval for use of dispersants and that handles, stores, or transports animal fats and vegetable oils may request a credit for up to 25 percent of the worst case planning volume set forth by subpart F of this part. To receive this credit, the facility owner or operator must identify in the plan and ensure, by contract or other approved means as described in § 154.1228(a), the availability of specified resources to apply the dispersants and to monitor their effectiveness. The extent of the credit for dispersants will be based on the volumes of the dispersant available to sustain operations at the manufacturers' recommended dosage rates. Other spill mitigation techniques, including mechanical dispersal, may be identified in the response plan provided they are in accordance with the NCP and the applicable ACP. Resources identified for plan credit should be capable of being on scene within 12 hours of a discovery of a discharge. Identification of these resources does not imply that they will be authorized for use. Actual authorization for use during a spill response will be governed by the provisions of the NCP and the applicable ACP.

**§ 154.1228 Methods of ensuring the availability of response resources by contract or other approved means.**

(a) When required in this subpart, the availability of response resources must be ensured by the following methods:

(1) The identification of an oil spill removal organization with specified equipment and personnel available within stipulated response times in specified geographic areas. The organization must provide written consent to being identified in the plan;

(2) A document which——

(i) Identifies the personnel, equipment, and services capable of being provided by the oil spill removal organization within stipulated response times in the specified geographic areas;

(ii) Sets out the parties' acknowledgment that the oil spill removal organization intends to commit the resources in the event of a response;

(iii) Permits the Coast Guard to verify the availability of the identified response resources through tests, inspections, and drills;

(iv) Is referenced in the response plan;

(3) Active membership in a local or regional oil spill removal organization that has identified specified personnel and equipment required under this subpart that are available to response to a discharge within stipulated response times in the specified geographic areas;

(4) Certification by the facility owner or operator that specified personnel and equipment required under this subpart are owned, operated, or under the direct control of the facility owner or operator, and are available within stipulated response times in the specified geographic areas; or

(5) A written contractual agreement with an oil spill removal organization. The agreement must identify and ensure the availability of specified personnel and equipment required under this subpart within stipulated response times in the specified geographic areas.

(b) The contracts and documents required in paragraph (a) of this section must be retained at the facility and must be produced for review upon request by the COTP.

5. Subpart I, consisting of §§ 154.1310 through 154.1325, is added to read as follows:

**Subpart I—Response Plans for Other Non-Petroleum Oil Facilities**

Sec.

154.1310 Purpose and applicability.
154.1320 Response plan submission requirements.
154.1325 Response plan development and evaluation criteria for facilities that handle, store, or transport other non-petroleum oils.

## Subpart I—Response Plans for Other Non-Petroleum Oil Facilities

**§ 154.1310 Purpose and applicability.**

This subpart establishes oil spill response planning requirements for an owner or operator of a facility that handles, stores, or transports other non-petroleum oils. The requirements of this subpart are intended for use in developing response plans and identifying response resources during the planning process. They are not performance standards.

**§ 154.1320 Response plan submission requirements.**

An owner or operator of a facility that handles, stores, or transports other non-petroleum oils shall submit a response plan in accordance with the requirements of this subpart, and with all sections of subpart F of this part, except §§ 154.1045 and 154.1047, which apply to petroleum oils.

**§ 154.1325 Response plan development and evaluation criteria for facilities that handle, store, or transport other non-petroleum oils.**

(a) An owner or operator of a facility that handles, stores, or transports other non-petroleum oils must provide information in his or her plan that identifies—

(1) Procedures and strategies for responding to a worst case discharge of other non-petroleum oils to the maximum extent practicable; and

(2) Sources of the equipment and supplies necessary to locate, recover, and mitigate such a discharge.

(b) An owner or operator of a facility that handles, stores, or transports other non-petroleum oils must ensure that any equipment identified in a response plan is capable of operating in the conditions expected in the geographic area(s) in which the facility operates using the criteria in Table 1 of appendix C of this part. When evaluating the operability of equipment, the facility owner or operator must consider limitations that are identified in the ACPs for the COTP zone in which the facility is located, including—

(1) Ice conditions;

(2) Debris;

(3) Temperature ranges; and

(4) Weather-related visibility.

(c) The owner or operator of a facility that handles, stores, or transports other non-petroleum oils must identify the response resources that are available by contract or other approved means as described in § 154.1028(a). The equipment identified in a response plan must include—

(1) Containment boom, sorbent boom, or other methods for containing oil floating on the surface or to protect shorelines from impact;

(2) Oil recovery devices appropriate for the type of other non-petroleum oils handled; and

(3) Other appropriate equipment necessary to respond to a discharge involving the type of oil handled.

(d) Response resources identified in a response plan under paragraph (c) of this section must be capable of commencing an effective on-scene response within the times specified in this paragraph for the applicable operating area:

| | Tier 1 (hrs.) | Tier 2 | Tier 3 |
|---|---|---|---|
| Higher volume port area | 6 | N/A | N/A |
| Great Lakes | 12 | N/A | N/A |
| All other river and canal, inland, near-shore, and offshore areas | 12 | N/A | N/A |

(e) A response plan for a facility that handles, stores, or transports other non-petroleum oils must identify response resources with firefighting capability. The owner or operator of a facility that does not have adequate firefighting resources located at the facility or that cannot rely on sufficient local firefighting resources must identify and ensure, by contract or other approved means as described in § 154.1028(a), the availability of adequate firefighting resources. The response plan must also identify an individual located at the facility to work with the fire department on other non-petroleum oil fires. This individual shall also verify that sufficient well-trained firefighting resources are available within a reasonable response time to a worst case scenario. The individual may be the qualified individual as defined in § 154.1020 and identified in the response plan or another appropriate individual located at the facility.

(f) The response plan for a facility that is located in any environment with year-round preapproval for use of dispersants and that handles, stores, or transports other non-petroleum oils may request a credit for up to 25 percent of the worst case planning volume set forth by subpart F of this part. To receive this credit, the facility owner or operator must identify in the plan and ensure, by contract or other approved means as described in § 154.1028(a), the availability of specified resources to apply the dispersants and to monitor their effectiveness. The extent of the credit will be based on the volumes of the dispersant available to sustain operations at the manufacturers' recommended dosage rates. Identification of these resources does not imply that they will be authorized for use. Actual authorization for use during a spill response will be governed by the provisions of the NCP and the applicable ACP.

6. Appendix C is revised to read as follows:

Appendix C—Guidelines for Determining and Evaluating Required Response Resources for Facility Response Plans

*1. Purpose*

1.1 The purpose of this appendix is to describe the procedures for identifying response resources to meet the requirements of subpart F of this part. These guidelines will be used by the facility owner or operator in preparing the response plan and by the Captain of the Port (COTP) when reviewing them. Response resources identified in subparts H and I of this part should be selected using the guidelines in section 2 and Table 1 of this appendix.

*2. Equipment Operability and Readiness*

2.1 All equipment identified in a response plan must be designed to operate in the conditions expected in the facility's geographic area. These conditions vary widely based on location and season. Therefore, it is difficult to identify a single stockpile of response equipment that will function effectively in each geographic location.

2.2 Facilities handling, storing, or transporting oil in more than one operating environment as indicated in Table 1 of this appendix must identify equipment capable of successfully functioning in each operating environment.

2.3 When identifying equipment for response plan credit, a facility owner or operator must consider the inherent limitations in the operability of equipment components and response systems. The criteria in Table 1 of this appendix should be used for evaluating the operability in a given environment. These criteria reflect the general conditions in certain operating areas.

2.3.1 The Coast Guard may require documentation that the boom identified in a response plan meets the criteria in Table 1. Absent acceptable documentation, the Coast Guard may require that the boom be tested to demonstrate that it meets the criteria in Table 1. Testing must be in accordance with ASTM F 715, ASTM F 989, or other tests approved by the Coast Guard.

2.4 Table 1 of this appendix lists criteria for oil recovery devices and boom. All other equipment necessary to sustain or support response operations in the specified operating environment must be designed to function in the same conditions. For example, boats which deploy or support skimmers or boom must be capable of being safely operated in the significant wave heights listed for the applicable operating environment.

2.5 A facility owner or operator must refer to the applicable local contingency plan or ACP, as appropriate, to determine if ice, debris, and weather-related visibility are significant factors in evaluating the operability of equipment. The local contingency plan or ACP will also identify the average temperature ranges expected in the facility's operating area. All equipment identified in a response plan must be designed to operate within those conditions or ranges.

2.6 The requirements of subparts F, G, H and I of this part establish response resource mobilization and response times. The distance of the facility from the storage location of the response resources must be used to determine whether the resources can arrive on scene within the stated time. A facility owner or operator shall include the time for notification, mobilization, and travel time of response resources identified to meet the maximum most probable discharge and Tier 1 worst case discharge response time requirements. For subparts F and G, tier 2 and 3 response resources must be notified and mobilized as necessary to meet the requirements for arrival on scene in accordance with §§ 154.1045 or 154.1047 of subpart F, or § 154.1135 of subpart G, as appropriate. An on water speed of 5 knots and a land speed of 35 miles per hour is assumed unless the facility owner or operator can demonstrate otherwise.

2.7 For subparts F and G, in identifying equipment, the facility owner or operator shall list the storage location, quantity, and manufacturer's make and model. For oil recovery devices, the effective daily recovery capacity, as determined using section 6 of this appendix must be included. For boom, the overall boom height (draft plus freeboard) should be included. A facility owner or operator is responsible for ensuring that identified boom has compatible connectors.

2.8 For subparts H and I, in identifying equipment, the facility owner or operator shall list the storage location, quantity, and manufacturer's make and model. For boom,

the overall boom height (draft plus freeboard) should be included. A facility owner or operator is responsible for ensuring that identified boom has compatible connectors.

*3. Determining Response Resources Required for the Average Most Probable Discharge*

3.1 A facility owner or operator shall identify sufficient response resources available, through contract or other approved means as described in § 154.1028(a), to respond to the average most probable discharge. The equipment must be designed to function in the operating environment at the point of expected use.

3.2 The response resources must include:

3.2.1 1,000 feet of containment boom or two times the length of the largest vessel that regularly conducts oil transfers to or from the facility, whichever is greater, and a means deploying it available at the spill site within 1 hour of the discovery of a spill.

3.2.2 Oil recovery devices with an effective daily recovery capacity equal to the amount of oil discharged in an average most probable discharge or greater available at the facility within 2 hours of the detection of an oil discharge.

3.2.3 Oil storage capacity for recovered oily material indicated in section 9.2 of this appendix.

*4. Determining Response Resources Required for the Maximum Most Probable Discharge*

4.1 A facility owner or operator shall identify sufficient response resources available, by contract or other approved means as described in § 154.1028(a), to respond to discharges up to the maximum most probable discharge volume for that facility. This will require response resources capable of containing and collecting up to 1,200 barrels of oil or 10 percent of the worst case discharge, whichever is less. All equipment identified must be designed to operate in the applicable operating environment specified in Table 1 of this appendix.

4.2 Oil recovery devices identified to meet the applicable maximum most probable discharge volume planning criteria must be located such that they arrive on scene within 6 hours in higher volume port areas (as defined in 154.1020) and the Great Lakes and within 12 hours in all other areas.

4.3 Because rapid control, containment, and removal of oil is critical to reduce spill impact, the effective daily recovery capacity for oil recovery devices must equal 50 percent of the planning volume applicable for the facility as determined in section 4.1 of this appendix. The effective daily recovery capacity for oil recovery devices identified in the plan must be determined using the criteria in section 6 of this appendix.

4.4 In addition to oil recovery capacity, the plan must identify sufficient quantities of containment boom available, by contract or other approved means as described in § 154.1028(a), to arrive within the required response times for oil collection and containment and for protection of fish and wildlife and sensitive environments. While the regulation does not set required quantities of boom for oil collection and containment, the response plan must identify and ensure, by contract or other approved means as described in § 154.1028(a), the availability of the boom identified in the plan for this purpose.

4.5 The plan must indicate the availability of temporary storage capacity to meet the guidelines of section 9.2 of this appendix. If available storage capacity is insufficient to meet this level, then the effective daily recovery capacity must be derated to the limits of the available storage capacity.

4.6 The following is an example of a maximum most probable discharge volume planning calculation for equipment identification in a higher volume port area: The facility's worst case discharge volume is 20,000 barrels. Ten percent of this is 2,000 barrels. Since this is greater than 1,200 barrels, 1,200 barrels is used as the planning volume. The effective daily recovery capacity must be 50 percent of this, or 600 barrels per day. The ability of oil recovery devices to meet this capacity will be calculated using the procedures in section 6 of this appendix. Temporary storage capacity available on scene must equal twice the daily recovery rate as indicated in section 9 of this appendix, or 1,200 barrels per day. This is the information the facility owner or operator will use to identify and ensure the availability of, through contract or other approved means as described in § 154.1028(a), the required response resources. The facility owner will also need to identify how much boom is available for use.

*5. Determining Response Resources Required for the Worst Case Discharge to the Maximum Extent Practicable*

5.1 A facility owner or operator shall identify and ensure availability of, by contract or other approved means, as described in § 154.1028(a), sufficient response resources to respond to the worst case discharge of oil to the maximum extent practicable. Section 7 of this appendix describes the method to determine the required response resources.

5.2 Oil spill response resources identified in the response plan and available through contract or other approved means, as described in § 154.1028(a), to meet the applicable worst case discharge planning volume must be located such that they can arrive at the scene of a discharge within the times specified for the applicable response tiers listed in § 154.1045.

5.3 The effective daily recovery capacity for oil recovery devices identified in a response plan must be determined using the criteria in section 6 of this appendix. A facility owner or operator shall identify the storage locations of all response resources that must be used to fulfill the requirements for each tier. The owner or operator of a facility whose required daily recovery capacity exceeds the applicable response capability caps in Table 5 of this appendix shall identify sources of additional equipment, their locations, and the arrangements made to obtain this equipment during a response. The owner or operator of a facility whose calculated planning volume exceeds the applicable contracting caps in Table 5 shall identify sources of additional equipment equal to twice the cap listed in Tiers 1, 2, and 3 or the amount necessary to reach the calculated planning volume, whichever is lower. The resources identified above the cap must be capable of arriving on scene not later than the Tiers 1, 2, and 3 response times in § 154.1045. No contract is required. While general listings of available response equipment may be used to identify additional sources, a response plan must identify the specific sources, locations, and quantities of equipment that a facility owner or operator has considered in his or her planning. When listing Coast Guard classified oil spill removal organization(s) which have sufficient removal capacity to recover the volume above the response capability cap for the specific facility, as specified in Table 5 of this appendix, it is not necessary to list specific quantities of equipment.

5.4 A facility owner or operator shall identify the availability of temporary storage capacity to meet the requirements of section 9.2 of this appendix. If available storage capacity is insufficient to meet this requirement, then the effective daily recovery capacity must be derated to the limits of the availabile storage capacity.

5.5 When selecting response resources necessary to meet the response plan requirements, the facility owner or operator must ensure that a portion of those resources are capable of being used in close-to-shore response activities in shallow water. The following percentages of the on-water response equipment identified for the applicable geographic area must be capable of operating in waters of 6 feet or less depth:

(i) Offshore—10 percent

(ii) Nearshore/inland/Great Lakes/rivers and canals—20 percent.

5.6 In addition to oil spill recovery devices, a facility owner or operator shall identify sufficient quantities of boom that are available, by contract or other approved means as described in § 154.1028(a), to arrive on scene within the required response times for oil containment and collection. The specific quantity of boom required for collection and containment will depend on the specific recovery equipment and strategies employed. A facility owner or operator shall also identify sufficient quantities of oil containment boom to protect fish and wildlife and sensitive environments for the number of days and geographic areas specified in Table 2. Sections 154.1035(b)(4)(iii) and 154.1040(a), as appropriate, shall be used to determine the amount of containment boom required, through contract or other approved means as described in § 154.1028(a), to protect fish and wildlife and sensitive environments.

5.7 A facility owner or operator must also identify, through contract or other approved means as described in § 154.1028(a), the availability of an oil spill removal organization capable of responding to a shoreline cleanup operation involving the calculated volume of oil and emulsified oil that might impact the affected shoreline. The volume of oil that must be planned for is calculated through the application of factors contained in Tables 2 and 3. The volume

calculated from these tables is intended to assist the facility owner or operator in identifying a contractor with sufficient resources and expertise. This planning volume is not used explicitly to determine a required amount of equipment and personnel.

*6. Determining Effective Daily Recovery Capacity for Oil Recovery Devices*

6.1 Oil recovery devices identified by a facility owner or operator must be identified by manufacturer, model, and effective daily recovery capacity. These rates must be used to determine whether there is sufficient capacity to meet the applicable planning critieria for the average most probable discharge, maximum most probable discharge, and worst case discharge to the maximum extent practicable.

6.2 For the purpose of determining the effective daily recovery capacity of oil recovery devices, the formula listed in section 6.2.1 of this appendix will be used. This method considers potential limitations due to available daylight, weather, sea state, and percentage of emulsified oil in the recovered material. The Coast Guard may assign a lower efficiency factor to equipment listed in a response plan if it determines that such a reduction is warranted.

6.2.1 The following formula must be used to calculate the effective daily recovery capacity:

R=T×24 hours×E

R=Effective daily recovery capacity
T=Throughout rate in barrels per hour (nameplate capacity)
E=20 percent Efficiency factor (or lower factor as determined by Coast Guard)

6.2.2 For those devices in which the pump limits the throughput of liquid, throughput rate will be calculated using the pump capacity.

6.2.3 For belt or mop type devices, the throughput rate will be calculated using the speed of the belt or mop through the device, assumed thickness of oil adhering to or collected by the device, and surface area of the belt or mop. For purposes of this calculation, the assumed thickness of oil will be 1/4 inch.

6.2.4 Facility owners or operators including oil recovery devices whose throughput is not measurable using a pump capacity or belt/mop speed may provide information to support an alternative method of calculation. This information must be submitted following the procedures in paragraph 6.3.2 of this appendix.

6.3 As an alternative to 6.2, a facility owner or operator may submit adequate evidence that a different effective daily recovery capacity should be applied for a specific oil recovery device. Adequate evidence is actual verified performance data in spill conditions or tests using ASTM F 631, ASTM F 808, or an equivalent test approved by the Coast Guard.

6.3.1 The following formula must be used to calculate the effective daily recovery capacity under this alternative:

R=D×U

R=Effective daily recovery capacity
D=Average Oil Recovery Rate in barrels per hour (Item 26 in ASTM F 808; Item 13.1.15 in ASTM F 631; or actual performance data)
U=Hours per day that a facility owner or operator can document capability to operate equipment under spill conditions. Ten hours per day must be used unless a facility owner or operator can demonstrate that the recovery operation can be sustained for longer periods.

6.3.2 A facility owner or operator proposing a different effective daily recovery rate for use in a response plan shall provide data for the oil recovery devices listed. The following is an example of these calculations:

A weir skimmer identified in a response plan has a manufacturer's rated throughput at the pump of 267 gallons per minute (gpm).

267 gpm=381 barrels per hour
R=381×24×.2=1829 barrels per day

After testing using ASTM procedures, the skimmer's oil recovery rate is determined to be 220 gpm. The facility owner of operator identifies sufficient response resources available to support operations 12 hours per day.

220 gpm=314 barrels per hour
R=314×12=3768 barrels per day

The facility owner or operator will be able to use the higher rate if sufficient temporary oil storage capacity is available. Determinations of alternative efficiency factors under paragraph 6.2 or alternative effective daily recovery capacities under paragraph 6.3 of this appendix will be made by Commandant, (G–MEP–6), Coast Guard Headquarters, 2100 Second Street SW., Washington, DC 20593. Response contractors or equipment manufacturers may submit required information on behalf of multiple facility owners or operators directly in lieu of including the request with the response plan submission.

*7. Calculating the Worst Case Discharge Planning Volumes*

7.1 The facility owner or operator shall plan for a response to a facility's worst case discharge. The planning for on-water recovery must take into account a loss of some oil to the environment due to evaporative and natural dissipation, potential increases in volume due to emulsification, and the potential for deposit of some oil on the shoreline.

7.2 The following procedures must be used to calculate the planning volume used by a facility owner or operator for determining required on water recovery capacity:

7.2.1 The following must be determined: The worst case discharge volume of oil in the facility; the appropriate group(s) for the type of oil handled, stored, or transported at the facility (non-persistent (Group I) or persistent (Groups II, III, or IV)); and the facility's specific operating area. Facilities which handle, store, or transport oil from different petroleum oil groups must calculate each group separately. This information is to be used with Table 2 of this appendix to determine the percentages of the total volume to be used for removal capacity planning. This table divides the volume into three categories: Oil lost to the environment; oil deposited on the shoreline; and oil available for on-water recovery.

7.2.2 The on-water oil recovery volume must be adjusted using the appropriate emulsification factor found in Table 3 of this appendix. Facilities which handle, store, or transport oil from different petroleum groups must assume that the oil group resulting in the largest on-water recovery volume will be stored in the tank or tanks identified as constituting the worst case discharge.

7.2.3 The adjusted volume is multiplied by the on-water oil recovery resource mobilization favor found in Table 4 of this appendix from the appropriate operating area and response tier to determine the total on-water oil recovery capacity in barrels per day that must be identified or contracted for to arrive on-scene with the applicable time for each response tier. Three tiers are specified. For higher volume port areas, the contracted tiers of resources must be located such that they can arrive on scene within 6, 30, and 54 hours of the discovery of an oil discharge. For all other river, inland, nearshore, offshore areas, and the Great Lakes, these tiers are 12, 36, and 60 hours.

7.2.4 The resulting on-water recovery capacity in barrels per day for each tier must be used to identify response resources necessary to sustain operations in the applicable operating area. The equipment must be capable of sustaining operations for the time period specified in Table 2 of this appendix. The facility owner or operator must identify and ensure the availability, through contract or other approved means as described in § 154.1028(a), of sufficient oil spill recovery devices to provide the effective daily recovery oil recovery capacity required. If the required capacity exceeds the applicable cap specified in Table 5 of this appendix, then a facility owner or operator shall ensure, by contract or other approved means as described in § 154.1028(a), only for the quantity of resources required to meet the cap, but shall identify sources of additional resources as indicated in § 154.1045(m). The owner or operator of a facility whose planning volume exceeds the cap for 1993 must make arrangements to identify and ensure the availability, through contract or other approved means as described in § 154.1028(a), of the additional capacity in 1998 or 2003, as appropriate. For a facility that handles, stores, or transports multiple groups of oil, the required effective daily recovery capacity for each group is calculated before applying the cap.

7.3 The following procedures must be used to calculate the planning volume for identifying shoreline cleanup capacity:

7.3.1 The following must be determined: The worst case discharge volume of oil for the facility; the appropriate group(s) for the type of oil handled, stored, or transported at the facility (non-persistent (Group I) or persistent (Groups II, III, or IV)); and the operating area(s) in which the facility operates. For a facility storing oil from different groups, each group must be calculated separately. Using this information, Table 2 of this appendix must be used to determine the percentages of the total

planning volume to be used for shoreline cleanup resource planning.

7.3.2 The shoreline cleanup planning volume must be adjusted to reflect an emulsification factor using the same procedure as described in section 7.2.2.

7.3.3 The resulting volume will be used to identify an oil spill removal organization with the appropriate shoreline cleanup capability.

7.3.4 The following is an example of the procedure described above: A facility receives oil from barges via a dock located on a bay and transported by piping to storage tanks. The facility handles Number 6 oil (specific gravity .96) and stores the oil in tanks where it is held prior to being burned in an electric generating plant. The MTR segment of the facility has six 18-inch diameter pipelines running one mile from the dock-side manifold to several storage tanks which are located in the non-transportation-related portion of the facility. Although the facility piping has a normal working pressure of 100 pounds per square inch, the piping has a maximum allowable working pressure (MAWP) of 150 pounds per square inch. At MAWP, the pumping system can move 10,000 barrels (bbls) of Number 6 oil every hour through each pipeline. The facility has a roving watchman who is required to drive the length of the piping every 2 hours when the facility is receiving oil from a barge. The facility operator estimates that it will take approximately 10 minutes to secure pumping operations when a discharge is discovered. Using the definition of worst case discharge provided in § 154.1029(b)(ii), the following calculation is provided:

| | bbls. |
|---|---|
| 2 hrs + 0.17 hour × 10,000 bbls per hour | 21,700 |
| Piping volume = 37,322 $ft^3$ ÷ 5.6 $ft^3$/bbl | +6,664 |
| Discharge volume per pipe | 28,364 |
| Number of pipelines | ×6 |
| Worst case discharge from MTR facility | 170,184 |

To calculate the planning volumes for onshore recovery:

Worst case discharge: 170,184 bbls. Group IV oil
Emulsification factor (from Table 3): 1.4
Operating Area impacted: Inland
Planned percent oil onshore recovery (from Table 2): Inland 70%
Planning volumes for onshore recovery: Inland 170,184 ×.7 × 1.4 = 166,780 bbls.

Conclusion: The facility owner or operator must contract with a response resource capable of managing a 166,780 barrel shoreline cleanup.

To calculate the planning volumes for on-water recovery:

Worst case discharge: 170,184 bbls. Group IV oil
Emulsification factor (from Table 3): 1.4
Operating Area impacted: Inland
Planned percent oil on-water recovery (from Table 2): Inland 50%
Planning volumes for on-water recovery: Inland 170,184 × .5 × 1.4 = 119,128 bbls.

To determine the required resources for on-water recovery for each tier, use the mobilization factors from Table 4:

| | Tier 1 | Tier 2 | Tier 3 |
|---|---|---|---|
| Inland = 119,128 bbls. | × .15 | × .25 | × .40 |
| Barrels per day (pbd) | 17,869 | 29,782 | 47,652 |

Conclusion: Since the requirements for all tiers for inland exceed the caps, the facility owner will only need to contract for 10,000 bpd for Tier 1, 20,000 bpd for Tier 2, and 40,000 bpd for Tier 3. Sources for the bpd on-water recovery resources above the caps for all three Tiers need only be identified in the response plan.

Twenty percent of the capability for Inland, for all tiers, must be capable of operating in water with a depth of 6 feet or less.

The facility owner or operator will also be required to identify or ensure, by contract or other approved means as described in § 154.1028(a), sufficient response resources required under §§ 154.1035(b)(4) and 154.1045(k) to protect fish and wildlife and sensitive environments identified in the response plan for the worst case discharge from the facility.

The COTP has the discretion to accept that a facility can operate only a limited number of the total pipelines at a dock at a time. In those circumstances, the worst case discharge must include the drainage volume from the piping normally not in use in addition to the drainage volume and volume of oil discharged during discovery and shut down of the oil discharge from the operating piping.

*8. Determining the Availability of Alternative Response Methods*

8.1 Response plans for facilities that handle, store, or transport Groups II or III persistent oils that operate in an area with year-round preapproval for dispersant use may receive credit for up to 25 percent of their required on-water recovery capacity for 1993 if the availability of these resources is ensured by contract or other approved means as described in § 154.1028(a). For response plan credit, these resources must be capable of being on-scene within 12 hours of a discharge.

8.2 To receive credit against any required on-water recover capacity a response plan must identify the locations of dispersant stockpiles, methods of shipping to a staging area, and appropriate aircraft, vessels, or facilities to apply the dispersant and monitor its effectiveness at the scene of an oil discharge.

8.2.1 Sufficient volumes of dispersants must be available to treat the oil at the dosage rate recommended by the dispersant manufacturer. Dispersants identified in a response plan must be on the NCP Product Schedule that is maintained by the Environmental Protection Agency. (Some states have a list of approved dispersants and within state waters only they can be used.)

8.2.2 Dispersant application equipment identified in a response plan for credit must be located where it can be mobilized to shoreside staging areas to meet the time requirements in section 8.1 of this appendix. Sufficient equipment capacity and sources of appropriate dispersants should be identified to sustain dispersant application operations for at least 3 days.

8.2.3 Credit against on-water recovery capacity in preapproved areas will be based on the ability to treat oil at a rate equivalent to this credit. For example, a 2,500 barrel credit against the Tier 1 10,000 barrel on-water cap would require the facility owner or operator to demonstrate the ability to treat 2,500 barrel/day of oil at the manufacturers recommended dosage rate. Assuming a dosage rate of 10:1, the plan would need to show stockpiles and sources of 250 barrels of dispersants at a rate of 250 barrels per day and the ability to apply the dispersant at that daily rate for 3 days in the geographic area in which the facility is located. Similar data would need to be provided for any additional credit against Tier 2 and 3 resources.

8.3 In addition to the equipment and supplies required, a facility owner or operator shall identify a source of support to conduct the monitoring and post-use effectiveness evaluation required by applicable regional plans and ACPs.

8.4 Identification of the response resources for dispersant application does not imply that the use of this technique will be authorized. Actual authorization for use during a spill response will be governed by the provisions of the NCP and the applicable regional plan or ACP. A facility owner or operator who operates a facility in areas with year-round preapproval of dispersant can reduce the required on-water recovery capacity for 1993 up to 25 percent. A facility owner or operator may reduce the required on water recovery cap increase for 1998 and 2003 up to 50 percent by identifying pre-approved alternative response methods.

8.5 In addition to the credit identified above, a facility owner or operator that operates in a year-round area pre-approved for dispersant use may reduce their required on water recovery cap increase for 1998 and 2003 by up to 50 percent by identifying non-mechanical methods.

8.6 The use of in-situ burning as a non-mechanical response method is still being studied. Because limitations and uncertainties remain for the use of this method, it may not be used to reduce required oil recovery capacity in 1993.

*9. Additional Equipment Necessary to Sustain Response Operations*

9.1 A facility owner or operator is responsible for ensuring that sufficient numbers of trained personnel and boats, aerial spotting aircraft, containment boom, sorbent materials, boom anchoring materials, and other supplies are available to sustain

response operations to completion. All such equipment must be suitable for use with the primary equipment identified in the response plan. A facility owner or operator is not required to list these response resources, but shall certify their availability.

9.2 A facility owner or operator shall evaluate the availability of adequate temporary storage capacity to sustain the effective daily recovery capacities from equipment identified in the plan. Because of the inefficiencies of oil spill recovery devices, response plans must identify daily storage capacity equivalent to twice the effective daily recovery rate required on scene. This temporary storage capacity may be reduced if a facility owner or operator can demonstrate by waste stream analysis that the efficiencies of the oil recovery devices, ability to decant waste, or the availability of alternative temporary storage or disposal locations will reduce the overall volume of oily material storage requirement.

9.3 A facility owner or operator shall ensure that his or her planning includes the capability to arrange for disposal of recovered oil products. Specific disposal procedures will be addressed in the applicable ACP.

TABLE 1.—RESPONSE RESOURCE OPERATING CRITERIA OIL RECOVERY DEVICES

| Operating environment | Significant wave height [1] | Sea State |
|---|---|---|
| Rivers and Canals | ≤1 Foot | 1 |
| Inland | ≤3 feet | 2 |
| Great Lakes | ≤4 feet | 2–3 |
| Ocean | ≤6 feet | 3–4 |

**BOOM**

| Boom property | Use | | | |
|---|---|---|---|---|
| | Rivers and canals | Inland | Great Lakes | Ocean |
| Significant Wave Height [1] | ≤1 | ≤3 | ≤4 | ≤6 |
| Sea State | 1 | 2 | 2–3 | 3–4 |
| Boom height—in. (draft plus freeboard) | 6–18 | 18–42 | 18–42 | ≤42 |
| Reserve Buoyancy to Weight Ratio | 2:1 | 2:1 | 2:1 | 3:1 to 4:1 |
| Total Tensile Strength—lbs. | 4,500 | 15–20,000 | 15–20,000 | ≤20,000 |
| Skirt Fabric Tensile Strength—lbs | 200 | 300 | 300 | 500 |
| Skirt Fabric Tear Strength—lbs | 100 | 100 | 100 | 125 |

[1] Oil recovery devices and boom must be at least capable of operating in wave heights up to and including the values listed in Table 1 for each operating environment.

TABLE 2.—REMOVAL CAPACITY PLANNING TABLE

| Spill location | Rivers and canals | | | Nearshore/inland Great Lakes | | | Offshore | | |
|---|---|---|---|---|---|---|---|---|---|
| Sustainability of on-water oil recovery | 3 Days | | | 4 Days | | | 6 Days | | |
| Oil group | % Natural dissipation | % Recovered floating oil | % Oil on shore | % Natural dissipation | % Recovered floating oil | % Oil on shore | % Natural dissipation | % Recovered floating oil | % Oil on shore |
| 1 Non-persistent oils | 80 | 10 | 10 | 80 | 20 | 10 | 95 | 5 | / |
| 2 Light crudes | 40 | 15 | 45 | 50 | 50 | 30 | 75 | 25 | 5 |
| 3 Medium crudes and fuels | 20 | 15 | 65 | 30 | 50 | 50 | 60 | 40 | 20 |
| 4 Heavy crudes and fuels | 5 | 20 | 75 | 10 | 50 | 70 | 50 | 40 | 30 |

TABLE 3.—EMULSIFICATION FACTORS FOR PETROLEUM OIL GROUPS

| | |
|---|---|
| Non-Persistent Oil: | |
| Group I | 1.0 |
| Persistent Oil: | |
| Group II | 1.8 |
| Group III | 2.0 |
| Group IV | 1.4 |

TABLE 4.—ON WATER OIL RECOVERY RESOURCE MOBILIZATION FACTORS

| Operating Area | Tier 1 | Tier 2 | Tier 3 |
|---|---|---|---|
| Rivers & Canals | .30 | .40 | .60 |
| Inland/Nearshore/Great Lakes | .15 | .25 | .40 |

TABLE 4.—ON WATER OIL RECOVERY RESOURCE MOBILIZATION FACTORS—Continued

| Operating Area | Tier 1 | Tier 2 | Tier 3 |
|---|---|---|---|
| Offshore | .10 | .165 | .21 |

Note: These mobilization factors are for total response resources mobilized, not incremental response resources.

TABLE 5.—Response Capability Caps by Operating Area

| | Tier 1 | Tier 2 | Tier 3 |
|---|---|---|---|
| February 18, 1993: | | | |
| All except rivers and canals, Great Lakes | 10K bbls/day | 20K bbls/day | 40K bbls/day/ |
| Great Lakes | 5K bbls/day | 10K bbls/day | 20K bbls/day. |
| Rivers and canals | 1,500 bbls/day | 3,000 bbls/day | 6,000 bbls/day. |
| February 18, 1998: | | | |
| All except rivers and canals, Great Lakes | 12.5K bbls/day | 25K bbls/day | 50K bbls/day. |

TABLE 5.—Response Capability Caps by Operating Area—Continued

| | Tier 1 | Tier 2 | Tier 3 |
|---|---|---|---|
| Great Lakes | 6.35K bbls/day | 12.3K bbls/day | 25K bbls/day. |
| Rivers and canals | 1,875 bbls/day | 3,750 bbls/day | 7,500 bbls/day. |
| February 18, 2003: | | | |
| All except rivers and canals, Great Lakes | TBD | TBD | TBD. |
| Great Lakes | TBD | TBD | TBD. |
| Rivers and canals | TBD | TBD | TBD. |

Note: The caps show cumulative overall effective daily recovery capacity, not incremental increases.
TBD = To be determined.

7. Appendix D is revised to read as follows:

Appendix D—Training Elements for Oil Spill Response Plans

*1. General*

1.1 The portion of the plan dealing with training is one of the key elements of a response plan. This concept is clearly expressed by the fact that Congress, in writing OPA 90, specifically included training as one of the sections required in a vessel or facility response plan. In reviewing submitted response plans, it has been noted that the plans often do not provide sufficient information in the training section of the plan for either the user or the reviewer of the plan. In some cases, plans simply state that the crew and others will be trained in their duties and responsibilities, with no other information being provided. In other plans, information is simply given that required parties will receive the necessary worker safety training (HAZWOPER).

1.2 The training section of the plan need not be a detailed course syllabus, but it must contain sufficient information to allow the user and reviewer (or evaluator) to have an understanding of those areas that are believed to be critical. Plans should identify key skill areas and the training that is required to ensure that the individual identified will be capable of performing the duties prescribed to them. It should also describe how the training will be delivered to the various personnel. Further, this section of the plan must work in harmony with those sections of the plan dealing with exercises, the spill management team, and the qualified individual.

1.3 The material in this appendix D is not all-inclusive and is provided for guidance only.

*2. Elements To Be Addressed*

2.1 To assist in the preparation of the training section of a facility response plan, some of the key elements that should be addressed are indicated in the following sections. Again, while it is not necessary that the comprehensive training program for the company be included in the response plan, it is necessary for the plan to convey the elements that define the program as appropriate.

2.2 An effective spill response training program should consider and address the following:

2.2.1 Notification requirements and procedures.

2.2.2 Communication system(s) used for the notifications.

2.2.3 Procedures to mitigate or prevent any discharge or a substantial threat of a discharge of oil resulting from failure of manifold, mechanical loading arm, or other transfer equipment or hoses, as appropriate;

2.2.3.1 Tank overfill;

2.2.3.2 Tank rupture;

2.2.3.3 Piping rupture;

2.2.3.4 Piping leak, both under pressure and not under pressure, if applicable;

2.2.3.5 Explosion or fire;

2.2.3.6 Equipment failure (e.g., pumping system failure, relief valve failure, or other general equipment relevant to operational activities associated with internal or external facility transfers).

2.2.4 Procedures for transferring responsibility for direction of response activities from facility personnel to the spill management team.

2.2.5 Familiarity with the operational capabilities of the contracted oil spill removal organizations and the procedures to notify the activate such organizations.

2.2.6 Familiarity with the contracting and ordering procedures to acquire oil spill removal organization resources.

2.2.7 Familiarity with the ACP(s).

2.2.8 Familiarity with the organizational structures that will be used to manage the response actions.

2.2.9 Responsibilities and duties of the spill management team members in accordance with designated job responsibilities.

2.2.10 Responsibilities and authority of the qualified individual as described in the facility response plan and company response organization.

2.2.11 Responsibilities of designated individuals to initiate a response and supervise response resources.

2.2.12 Actions to take, in accordance with designated job responsibilities, in the event of a transfer system leak, tank overflow, or suspected cargo tank or hull leak.

2.2.13 Information on the cargoes handled by the vessel or facility, including familiarity with—

2.2.13.1 Cargo material safety data sheets;

2.2.13.2 Chemical characteristic of the cargo;

2.2.13.3 Special handling procedures for the cargo;

2.2.13.4 Health and safety hazards associated with the cargo; and

2.2.13.5 Spill and firefighting procedures for cargo.

2.2.14 Occupational Safety and Health Administration requirements for worker health and safety (29 CFR 1910.120).

*3. Further Considerations*

In drafting the training section of the facility response plan, some further considerations are noted below (these points are raised simply as a reminder):

3.1 The training program should focus on training provided to facility personnel.

3.2 An organization is comprised of individuals, and a training program should be structured to recognize this fact by ensuring that training is tailored to the needs of the individuals involved in the program.

3.3 An owner or operator may identify equivalent work experience which fulfills specific training requirements.

3.4 The training program should include participation in periodic announced and unannounced exercises. This participation should approximate the actual roles and responsibilities of individual specified in the plan.

3.5 Training should be conducted periodically to reinforce the required knowledge and to ensure an adequate degree of preparedness by individuals with responsibilities under the facility response plan.

3.6 Training may be delivered via a number of different means; including classroom sessions, group discussions, video tapes, self-study workbooks, resident training courses, on-the-job training, or other means as deemed appropriate to ensure proper instruction.

3.7 New employees should complete the training program prior to being assigned job responsibilities which require participation in emergency response situations.

*4. Conclusion*

The information in this appendix is only intended to assist response plan preparers in reviewing the content of and in modifying the training section of their response plans. It may be more comprehensive than is needed for some facilities and not comprehensive enough for others. The Coast Guard expects that plan preparers have determined the training needs of their organizations created by the development of the response plans and the actions identified as necessary to increase the preparedness of the company and its personnel to respond to actual or threatened discharges of oil from their facilities.

Dated: February 15, 1996.

A.E. Henn,

*Vice Admiral, U.S. Coast Guard, Acting Commandant.*

[FR Doc. 96–4274 Filed 2–28–96; 8:45 am]

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# Part IV

# Department of Housing and Urban Development

## Office of the Secretary

**24 CFR Subtitle A, et al.**

**Elimination of Unnecessary Codifications; Final Rule**

## DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

### Office of the Secretary

### 24 CFR Subtitle A, Subtitle B, and Parts 200, 202a, 222, 233, 241, 260, 266, 267 and 850

**[Docket No. FR–3993–F–01]**

**RIN 2501–AC14**

### Elimination of Unnecessary Codifications

**AGENCY:** Office of the Secretary, HUD.

**ACTION:** Final rule.

**SUMMARY:** This final rule removes from title 24 of the Code of Federal Regulations the Department's codified appendices, parts, subparts, and text which are unnecessary. Following a review of existing HUD regulations in accordance with the President's regulatory reinvention initiative, the Department has determined that the codified appendices, parts, subparts, and text identified in this rule are unnecessary to be retained in the Code of Federal Regulations because the programs will not receive additional funding; no regulatory requirements are included in the codifications and, therefore, the provisions need not be codified or can be provided through other non-rulemaking means; e.g., notices or handbooks; the regulatory text is duplicative and can be found elsewhere; the program has ended; or there are only a few outstanding mortgages or contracts under the program.

This final rule also removes several provisions describing cross-cutting definitions and HUD's waiver authority that were not addressed in the Department's final rule creating part 5, which was published on February 9, 1996. Part 5 was designed to set forth those definitions and program requirements which cut across several of the Department's programs.

**EFFECTIVE DATE:** April 1, 1996.

**FOR FURTHER INFORMATION CONTACT:** Camille E. Acevedo, Assistant General Counsel for Regulations, Department of Housing and Urban Development, Room 10276, 451 Seventh Street, SW, Washington, DC 20410. Telephone: (202) 708–3055; TDD: (202) 708–3259.

**SUPPLEMENTARY INFORMATION:**

A. Elimination of Unnecessary Codifications

President Clinton's memorandum of March 4, 1995, titled ''Regulatory Reinvention Initiative'' directed heads of Federal departments and agencies to review all existing regulations to eliminate those that are outdated and modify others to increase flexibility and reduce burden. As a part of HUD's overall effort to reduce regulatory burden and streamline the content of title 24 of the Code of Federal Regulations, this rule removes those appendices, parts, subparts, and text which are unnecessary. Guidance presently provided in these appendices codified will be available through other non-rulemaking means.

To the extent that regulations are needed to implement new legislation, they will be issued separately from this document. Any determination to issue new regulations will be carefully considered to ensure that it is consistent with the President's regulatory reform efforts and the principles in Executive Order 12866.

*Appendices unnecessary because the programs will not receive additional funding:* 24 CFR Subtitle A, Appendices A and B. Appendices A and B of Subtitle A, which contain the program guidelines for the HOPE 1 and HOPE 2 programs will be removed.

Note: HOPE 1 (Appendix A) implementation and planning grantees will comply with the HOPE 1 program guidelines published in the Federal Register on January 14, 1992, at 57 FR 1527, as modified by any subsequent Federal statutory enactments or executive orders. HOPE 2 (Appendix B) implementation and planning grantees will comply with the HOPE 2 program guidelines published in the Federal Register on January 14, 1992, at 57 FR 1562, as modified by any subsequent Federal statutory enactments or executive orders. Grantees for both programs also remain subject to any requirements set forth in the implementation or planning grant agreement, as applicable, including HUD handbooks and notices.

*Appendices and subparts unnecessary because no regulatory requirements are included and the provisions need not be codified or can be provided through other non-rulemaking means; e.g., notices or handbooks:* 24 CFR Subtitle B, Chapter I, Subchapter A, Appendices II, III and IV; 24 CFR part 200, subparts A, C, and D (except for § 200.93); 24 CFR part 265.

*Removal of Appendices.* Appendices II, III, and IV of Subtitle B, Chapter I, Subchapter II contain the Fair Housing Accessibility Guidelines, the preamble to the final Fair Housing Accessibility Guidelines, and a document entitled ''Questions and Answers about the Fair Housing Accessibility Guidelines. The Fair Housing Accessibility Guidelines are not mandatory, nor do they prescribe specific requirements which must be met and which if not met, would constitute unlawful discrimination under the Fair Housing Act. The purpose of the guidelines is to provide technical guidance on designing dwelling units as required by the Fair Housing Amendments Act. Removal of the Guidelines will make it easier for HUD to update the Guidelines, if necessary and appropriate, to address issues that may arise with respect to new types of designs for dwelling units (the CFR is updated only once a year).

Note: Copies of the Fair Housing Accessibility Guidelines (Appendix II), the preamble to the final Fair Housing Act Accessibility Guidelines (Appendix III), and the document entitled ''Questions and Answers about the Fair Housing Accessibility Guidelines'' (Appendix IV) are available from the Office of Fair Housing and Equal Opportunity, Department of Housing and Urban Development, Room 5230, 451 Seventh Street, SW, Washington, DC 20410, telephone (202) 708–0288. Hearing or speech-impaired individuals may call HUD's TDD number (202) 708–0113 or 1–800–877–8399 (Federal Information Relay Service TDD). Other than the 800 number, these are not toll-free numbers.

*Removal of Subparts A, C and D from Part 200.* Subparts A, C, and D of part 200 pertain to origin and establishment, organization and management, and delegations to particular positions, respectively. These provisions need not be codified (except for § 200.93) and will be made available through non-rulemaking means. Section 200.93 (presently contained in subpart D) pertains to the membership and functions of the Multifamily Participation Review Committee and is being retained as a new § 200.227 within subpart H.

*Subpart unnecessary because the regulatory text is duplicative and can be found elsewhere by cross-reference:* Subpart I of 24 CFR part 200 is being removed except for § 200.300, pertaining to nondiscrimination and fair housing policy, which is being retained with minor editorial revisions to maintain the cross-references to the controlling regulations.

*Part unnecessary because the program has ended or was never implemented:* 24 CFR parts 202a and 260.

Part 202a, which pertains to Title I Mortgage Insurance, is being removed because the program has expired. Part 260 pertains to Interest Subsidy Grants, for which regulations were promulgated, but the program was never implemented.

*Parts for expiring programs, under which there are only a few outstanding mortgages, contracts or grants:* 24 CFR part 850.

No new grants have been issued under part 850, the Housing Development Grants Program. This is an expiring program.

Note: The grants associated with part 850 (Housing Development grants) will continue to be administered under the regulations that existed immediately before April 1, 1996.

B. *Cross-Cutting requirements.* Continued consolidation of certain cross-cutting requirements.

On February 9, 1996 (61 FR 5198), the Department published a final rule creating a new 24 CFR part 5. HUD established part 5 to set forth those requirements which are applicable to one or more program regulations. Consolidation of these requirements in part 5 will eliminate redundancy in title 24 and assist in the Department's overall efforts to streamline the content of its regulations.

This rule removes §§ 222.248, 233.248, 266.35, and 267.4 which set forth the Department's waiver authority. Further, this rule also removes the definition of the term ''Secretary'' in § 241.1. HUD's waiver authority and the definition of ''Secretary'' are already set forth in 24 CFR part 5.

*Justification for Final Rule*

In accordance with 24 CFR part 10, it is the practice of the Department to offer interested parties the opportunity to comment on proposed regulations. However, this rule merely removes unnecessary appendices, parts, subparts and text from title 24 of the Code of Federal Regulations. Removal of these codifications does not establish or affect substantive policy. Therefore, the Department has determined that public comment is unnecessary and contrary to the public interest.

Other Matters

*Environmental Review*

This rulemaking does not have an environmental impact. This rulemaking simply amends existing regulations by removing unnecessary provisions and does not alter the environmental effect of the regulations being amended. Findings of No Significant Impact with respect to the environment were made in accordance with HUD regulations in 24 CFR part 50 that implement section 102(2)(C) of the National Environmental Policy Act of 1969 (42 U.S.C. 4332) at the time of development of the implementing regulations. Those Findings remain applicable to this rule and are available for public inspection between 7:30 a.m. and 5:30 p.m. weekdays in the Office of the Rules Docket Clerk at the above address.

*Regulatory Flexibility Act*

The Secretary, in accordance with the Regulatory Flexibility Act (5 U.S.C. 605(b)), has reviewed this rule before publication and by approving it certifies that this rule does not have a significant economic impact on a substantial number of small entities because this rule pertains to the administrative matter of removing unnecessary codifications from the Code of Federal Regulations.

*Executive Order 12612, Federalism*

The General Counsel, as the Designated Official under section 6(a) of Executive Order 12612, *Federalism,* has determined that this rule does not have ''federalism implications'' because it does not have substantial direct effects on the States (including their political subdivisions) or on the distribution of power and responsibilities among the various levels of government.

*Executive Order 12606, The Family*

The General Counsel, as the Designated Official under Executive Order 12606, *The Family,* has determined that this rule does not have potential significant impact on family formation, maintenance, and general well-being.

List of Subjects

*24 CFR Part 200*

Administrative practice and procedure, Claims, Equal employment opportunity, Fair housing, Home improvement, Housing standards, Incorporation by reference, Lead poisoning, Loan programs—housing and community development, Minimum property standards, Mortgage insurance, Organization and functions (Government agencies), Penalties, Reporting and recordkeeping requirements, Social security, Unemployment compensation, Wages.

*24 CFR Part 202a*

Mortgage insurance.

*24 CFR Part 222*

Condominiums, Military personnel, Mortgage insurance.

*24 CFR Part 233*

Home improvement, Loan programs—housing and community development, Mortgage insurance, Reporting and recordkeeping requirements.

*24 CFR Part 241*

Energy conservation, Home improvement, Loan programs—housing and community development, Mortgage insurance, Reporting and recordkeeping requirements, Solar energy.

*24 CFR Part 260*

Grant programs—housing and community development, Low and moderate income housing.

*24 CFR Part 266*

Aged, Fair housing, Intergovernmental relations, Mortgage insurance, Low and moderate income housing, Reporting and recordkeeping requirements.

*24 CFR Part 267*

Appraisals, Mortgage insurance, Property valuation, Reporting and recordkeeping requirements.

*24 CFR Part 850*

Grant programs—housing and community development, Low and moderate income housing, Reporting and recordkeeping requirements.

Accordingly, pursuant to the Secretary's authority under 42 U.S.C. 3535(d), subtitle A, subtitle B, and parts 200, 202a, 222, 233, 241, 260, 266, 267, and 850 of title 24 of the Code of Federal Regulations are amended as follows:

**Subtitle A—Office of the Secretary, Department of Housing and Urban Development**

*Appendices A and B of Subtitle A [Removed]*

1. Appendices A and B to subtitle A are removed.

**Subtitle B—Regulations Relating to Housing and Urban Development**

**CHAPTER I—OFFICE OF ASSISTANT SECRETARY FOR EQUAL OPPORTUNITY, DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT**

**Subchapter A—Fair Housing**

*Appendices II, III, and IV of Subtitle B, Chapter I, Subchapter A [Removed]*

2. Subtitle B, chapter I, subchapter A is amended by removing Appendices II, III, and IV.

## PART 200—INTRODUCTION

3. Part 200 is amended:

**Subparts A and C [Removed and Reserved]**

a. By removing and reserving subparts A (§§ 200.1 through 200.4) and C (§§ 200.40 through 200.44);

**§ 200.93 [Redesignated as § 200.27]**

b. By redesignating § 200.93 as § 200.227;

**Subpart D [Removed and Reserved]**

c. By removing and reserving subpart D (§§ 200.50 through 200.129);

**§ 200.224 [Amended]**

d. By amending § 200.224 by removing the reference to ''§ 200.93'', and adding in its place ''§ 200.227''; and

e. By revising subpart I, to read as follows:

## Subpart I—Nondiscrimination and Fair Housing

**§ 200.300 Nondiscrimination and fair housing policy.**

Federal Housing Administration programs shall be administered in accordance with:

(a) The nondiscrimination and fair housing requirements set forth in 24 CFR part 5; and

(b) The affirmative fair housing marketing requirements in 24 CFR part 200, subpart M and 24 CFR part 108.

## PART 202a [REMOVED]

4. Part 202a is removed.

## PART 222—SERVICEPERSON'S MORTGAGE INSURANCE

**§ 222.248 [Removed]**

5. Section 222.248 is removed.

## PART 233—EXPERIMENTAL HOUSING MORTGAGE INSURANCE

**§ 233.248 [Removed]**

6. Section 233.248 and the undesignated heading preceding it are removed.

## PART 241—SUPPLEMENTARY FINANCING FOR INSURED PROJECT MORTGAGES

**§ 241.1 [Amended]**

7. Section 241.1 is amended by removing paragraph (j) and by redesignating paragraphs (k) and (l) and paragraphs (j) and (k), respectively.

## PART 260 [REMOVED]

8. Part 260 is removed.

## PART 266—HOUSING FINANCE AGENCY RISK-SHARING PROGRAM FOR INSURED AFFORDABLE MULTIFAMILY PROJECT LOANS

**§ 266.35 [Removed]**

9. Section 266.35 is removed.

## PART 267—APPRAISAL AND PROPERTY VALUATION

**§ 267.4 [Removed]**

10. Section 267.4 is removed.

## PART 850—HOUSING DEVELOPMENT GRANTS

11. Section 850.1 is revised to read as follows:

**§ 850.1 Applicability and savings clause.**

(a) *Applicability*. This part implements the Housing Development Grant Program contained in section 17 of the United States Housing Act of 1937 (42 U.S.C. 1437o). The Program authorized the Secretary to make housing development grants to support the new construction or substantial rehabilitation of real property to be used primarily for residential rental purposes. Section 289(b)(1) of the Cranston-Gonzalez National Affordable Housing Act (42 U.S.C. 12839) repealed section 17 effective October 1, 1991. Section 289(a) prohibited new grants under the Housing Development Grant Program except for projects for which binding commitments had been entered into prior to October 1, 1991.

(b) *Savings clause*. Any grant made pursuant to a binding commitment entered into before October 1, 1991 will continue to be governed by subparts A through E of this part in effect immediately before April 1, 1996, and by subpart F of this part as currently in effect.

**§ 850.3 [Removed]**

12. Section 850.3 is removed.

**Subparts B, C, D, and E [Removed and Reserved]**

13. Subparts B (§§ 850.11 through 850.17), C (§§ 850.31 through 850.39), D (§§ 850.61 through 850.79), and E (§§ 850.101 through 850.107) are removed and reserved.

Dated: February 22, 1996.

Henry G. Cisneros,

*Secretary.*

[FR Doc. 96–4585 Filed 2–28–96; 8:45 am]

BILLING CODE 4210–32–P

Federal Register

Thursday
February 29, 1996

Part V

# Department of Housing and Urban Development

**24 CFR Part 266**

**Regulatory Reinvention; Streamlining of Housing Finance Agency Risk-Sharing Program for Insured Affordable Multifamily Project Loans; Final Rule**

**DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT**

**Office of the Assistant Secretary for Housing-Federal Housing Commissioner**

**24 CFR Part 266**

**[Docket No. FR–3981–F–01]**

**RIN 2502–AG60**

## Regulatory Reinvention; Streamlining of Housing Finance Agency Risk-Sharing Program for Insured Affordable Multifamily Project Loans

**AGENCY:** Office of the Assistant Secretary for Housing-Federal Housing Commissioner, HUD.

**ACTION:** Final rule.

**SUMMARY:** This final rule streamlines HUD's regulations governing the Housing Finance Agency (HFA) Risk-Sharing program at 24 CFR part 266. Specifically, this rule removes regulatory provisions from part 266 which are best set forth in non-regulatory guidance. Under the HFA Risk-Sharing Program, HFAs are permitted to originate and service mortgage loans that are fully insured by the Federal Housing Administration. Participating HFAs are required to share in the risk associated with monetary losses that may result from loan defaults. HUD's elimination of redundant or unnecessary language from part 266 will increase program flexibility and assist in HUD's continuing efforts to streamline title 24.

**EFFECTIVE DATE:** April 1, 1996.

**FOR FURTHER INFORMATION CONTACT:** Jane Luton, Director, New Products Division, Office of Multifamily Housing Development, Room 6142, Department of Housing and Urban Development, 451 Seventh Street, SW, Washington, DC 20410, telephone number (202) 708–2556 (this is not a toll-free number). For hearing- and speech-impaired persons, this number may be accessed via TDD by calling the Federal Information Relay Service at 1–800–877–8339.

**SUPPLEMENTARY INFORMATION:**

I. Background

On March 4, 1995, President Clinton issued a memorandum to all Federal departments and agencies regarding regulatory reinvention. In response to this memorandum, HUD conducted a page-by-page review of its regulations to determine which can be eliminated, consolidated, or otherwise improved. As part of this review, HUD reexamined its regulations governing the Housing Finance Agency (HFA) Risk-Sharing Program at 24 CFR part 266. Under the HFA Risk-Sharing Program, HFAs are permitted to originate and service mortgage loans that are fully insured by the Federal Housing Administration. Participating HFAs are required to share in the risk associated with monetary losses that may result from loan defaults.

HUD has determined that the regulations for the HFA Risk-Sharing Program can be improved and streamlined by eliminating unnecessary provisions. After careful consideration, HUD has decided to retain most of part 266, inasmuch as the regulations are incorporated by reference in each approved HFA's Risk-Sharing Agreement. Since the Risk-Sharing Agreement forms the basis for operating the program, it is in HUD's interest, and that of program participants, to retain most sections of part 266. However, this final rule removes those sections of part 266 concerning the application process and the contents of the Risk-Sharing Agreement.

With respect to the section on application requirements, applications are solicited through publication of a notice in the Federal Register. Since that notice contains the requirements for submitting an application, including required exhibits, it is unnecessary to repeat such requirements in part 266. Therefore, this final rule revises § 266.105, which concerns the application requirements, to simply state that HUD will identify all necessary requirements for the submission of an application through Federal Register notice.

With respect to the section on the contents of the Risk-Sharing Agreement, an agreement for use by State and local HFAs participating in the program has been developed. Therefore, it is no longer necessary to list the items to be included in the Risk-Sharing Agreement. Accordingly, this final rule amends § 266.15 to remove such a list.

II. Justification for Final Rulemaking

HUD generally publishes a rule for public comment before issuing a rule for effect, in accordance with its own regulations on rulemaking in 24 CFR part 10. However, part 10 provides for exceptions to the general rule if the agency finds good cause to omit advance notice and public participation. The good cause requirement is satisfied when prior public procedure is ''impracticable, unnecessary, or contrary to the public interest'' (24 CFR 10.1). HUD finds that good cause exists to publish this rule for effect without first soliciting public comment. This final rule merely removes unnecessary provisions which can best be set forth in non-regulatory guidance. This rule does not establish or affect substantive policy. Therefore, prior public comment is unnecessary.

III. Other Matters

*A. Regulatory Flexibility Act*

The Secretary, in accordance with the Regulatory Flexibility Act (5 U.S.C. 605(b)), has reviewed and approved this final rule, and in so doing certifies that this rule will not have a significant economic impact on a substantial number of small entities. This rule merely streamlines 24 CFR part 266 by removing provisions which do not require regulatory codification. The rule will have no adverse or disproportionate economic impact on small businesses.

*B. Environmental Impact*

This rulemaking does not have an environmental impact. This rulemaking simply amends an existing regulation by streamlining provisions and does not alter the environmental effect of the regulations being amended. A Finding of No Significant Impact with respect to the environment was made in accordance with HUD regulations in 24 CFR part 50 that implement section 102(2)(C) of the National Environmental Policy Act of 1969 (42 U.S.C. 4332) at the time of development of regulations implementing the HFA Risk-Sharing Program. That finding remains applicable to this rule and is available for public inspection between 7:30 a.m. and 5:30 p.m. weekdays in the Office of the Rules Docket Clerk, Office of General Counsel, Room 10276, Department of Housing and Urban Development, 451 Seventh Street, SW, Washington, DC.

*C. Executive Order 12612, Federalism*

The General Counsel, as the Designated Official under section 6(a) of Executive Order 12612, *Federalism,* has determined that this rule will not have substantial direct effects on States or their political subdivisions, or the relationship between the Federal government and the States, or on the distribution of power and responsibilities among the various levels of government. No programmatic or policy changes will result from this rule that would affect the relationship between the Federal Government and State and local governments.

*D. Executive Order 12606, The Family*

The General Counsel, as the Designated Official under Executive Order 12606, *The Family,* has determined that this rule will not have the potential for significant impact on

family formation, maintenance, or general well-being, and thus is not subject to review under the Order. No significant change in existing HUD policies or programs will result from promulgation of this rule.

List of Subjects in 24 CFR Part 266

Aged, Fair housing, Intergovernmental relations, Mortgage insurance, Low and moderate income housing, Reporting and recordkeeping requirements.

Accordingly, 24 CFR part 266 is amended as follows:

## PART 266—HOUSING FINANCE AGENCY RISK-SHARING PROGRAM FOR INSURED AFFORDABLE MULTIFAMILY PROJECT LOANS

1. The authority citation for 24 CFR part 266 continues to read as follows:

Authority: 12 U.S.C. 1707; 42 U.S.C. 3535(d).

2. Section 266.15 is revised to read as follows:

**§ 266.15 Risk-Sharing Agreement.**

Execution of a Risk-Sharing Agreement is a prerequisite to participation in this program. The Risk-Sharing Agreement shall be in a form acceptable to the Commissioner.

3. Section 266.105 is revised to read as follows:

**§ 266.105 Application requirements.**

(a) *Applications for approval as a HUD-approved multifamily mortgagee.* HFAs that are not HUD-approved mortgagees at the time of their application to participate in the program under this part must submit, concurrently, separate applications for approval to participate in the program and for approval to operate as a HUD-approved mortgagee. Application for approval as a HUD-approved mortgagee must be submitted to HUD in accordance with the applicable HUD requirements.

(b) *Applications for participation in program.* Applications from HFAs for approval to participate in the program under this part will be submitted in response to a notice published in the Federal Register. The notice will include the required application exhibits and any other information or documentation necessary for approval for participation in the Risk-Sharing Program.

Dated: February 22, 1996.

Nicolas P. Retsinas,

*Assistant Secretary for Housing-Federal Housing Commissioner.*

[FR Doc. 96–4542 Filed 2–28–96; 8:45 am]

BILLING CODE 4210–27–P

Federal Register

Thursday
February 29, 1996

Part VI

# Department of Commerce

## National Telecommunications and Information Administration

## Telecommunications and Infrastructure Assistance Program; Notice

## DEPARTMENT OF COMMERCE

### National Telecommunications and Information Administration

**[Docket Number: 950124024–6045–03; CFDA: 11.552]**

**RIN 0660–AA04**

### Telecommunications and Information Infrastructure Assistance Program

**AGENCY:** National Telecommunications and Information Administration, Commerce.

**ACTION:** Notice of solicitation of grant applications.

**SUMMARY:** Subject to the availability of fiscal year 1996 funds, the National Telecommunications and Information Administration (NTIA) issues this Notice describing the conditions under which applications will be accepted under the Telecommunications and Information Infrastructure Assistance Program (TIIAP) and how NTIA will determine which applications it will fund. TIIAP assists eligible organizations by promoting the widespread use of advanced telecommunications and information technologies in the public and non-profit sectors. By providing matching grants for Demonstration, Access, and Planning projects, this program will help develop a nationwide, interactive, multimedia information infrastructure that is accessible to all citizens, in rural as well as urban areas.

**DATES:** Complete applications for the fiscal year 1996 TIIAP grant program must be mailed or hand-carried to the address indicated below and received by NTIA by 5 P.M. EST, April 4, 1996. Applications received after that time and date will not be accepted. Applications will not be accepted via facsimile machine transmission or e-mail. NTIA anticipates that it will take between 4 and 6 months to process applications and make final funding determinations.

**ADDRESSES:** Telecommunications and Information Infrastructure Assistance Program, National Telecommunications and Information Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW., HCHB, Room 4090, Washington, DC 20230.

**FOR FURTHER INFORMATION, CONTACT:** Stephen J. Downs, Acting Director of the Telecommunications and Information Infrastructure Assistance Program, Telephone: 202/482–2048. Fax: 202/501–5136. E-mail: tiiap@ntia.doc.gov.

**SUPPLEMENTARY INFORMATION:**

Program Purposes

NTIA announces the third annual round of a competitive matching grant* program, TIIAP. TIIAP was created to promote the development and widespread availability of advanced telecommunications and information technologies to serve the public interest.

To accomplish this objective, TIIAP will provide matching grants to state and local governments, non-profit health care and public health providers, school districts, libraries, colleges, universities, public safety providers, non-profit community-based organizations, and other non-profit entities, for projects that will improve the quality of, and the public's access to, education and lifelong learning; reduce the cost, improve the quality, and/or increase the accessibility of health care and public health services; promote responsive public services; and foster communication and resource-sharing within communities, both rural and urban.

Authority

The Departments of Commerce, Justice, and State, the Judiciary and Related Agencies Appropriations Act of 1994, P.L. No. 103–317, 108 Stat. 1724, 1747 (1994) and P.L. No. 104–99 ''Balanced Budget Downpayment Act, I.''

Funding Availability

NTIA issues this Notice subject to the appropriations made available under the continuing resolution (P.L. No. 104–99). NTIA anticipates making grant awards provided that funding for TIIAP is continued beyond March 15, 1996, the expiration date of the current continuing resolution. This continuing resolution includes $21.5 million for TIIAP. Issuance of grants, however, is subject to the future availability of FY 1996 funds. Further notice will be made in the Federal Register of the final status of funding for this program at the appropriate time.

Based on past experience, NTIA expects that the level of competition will be extremely strong. In fiscal year 1995, NTIA received more than 1,800 applications, collectively requesting more than $680 million in grant funds. From these 1,800 applications, the Department of Commerce announced 117 TIIAP awards totaling $35.7 million in Federal funds.

*Terms marked with an asterisk (*) are defined at the end of this Notice.

Eligibility Criteria

Eligible Organizations. All state and local governments, all colleges and universities, and all non-profit entities are eligible to apply. However, individuals and for-profit organizations are not eligible.

Matching Funds Requirements. Grant recipients under this program will be required to provide matching funds toward the total project cost. A project will not be considered eligible for funding unless the applicant documents the capacity to supply matching funds. Matching funds may be in the form of cash or in-kind contributions. Grant funds under this program will be released in direct proportion to local matching funds raised and/or documented. NTIA will supply up to 50% of the total project cost, unless extraordinary circumstances warrant a grant of up to 75%. Federal funds (such as grants) generally may not be used as matching monies, except as provided by Federal statute. For information about whether particular Federal funds may be used as matching funds, the applicant should contact the Federal agency that administers the funds in question.

Scope of Proposed Project. Funded projects must fall into the program categories and priorities described in this Notice. Projects must involve the delivery of useful, practical services in real-world environments within the grant award period. In fiscal year 1996, TIIAP will not fund the following kinds of projects:

One-Way Networks. TIIAP will not support the construction or augmentation of one-way networks; all services and networks proposed under the program must be interactive.*

Content Development* Projects. TIIAP will not support projects whose primary focus is to develop or produce information content, rather than to apply information infrastructure* to practical problems. For example, TIIAP will not consider projects whose primary purpose is the creation of databases or other information resources by converting paper-based information. Similarly, TIIAP will not consider projects that create new information resources, such as World Wide Web sites, unless these projects also include specific measures to ensure access to and use of those resources. Examples of such measures include, but are not limited to, placement of public access workstations and provision of training programs.

Hardware or Software Development Projects. While some hardware or software development may be required

to integrate existing systems or components, it may not be a major emphasis of any TIIAP project.

Single-Organization Projects. TIIAP will not support projects whose primary emphasis is on the internal communications needs of a single organization. Projects must include appropriate partnerships, with plans for inter-organizational communications among the partners.

Replacement or Upgrade of Existing Facilities. TIIAP will not support any projects whose primary emphasis is the upgrade or replacement of existing facilities.

Policy on Sectarian Activities. Applicants are advised that on December 22, 1995, NTIA issued a notice in the Federal Register on its policy with regard to sectarian activities. Under NTIA's prior policy, NTIA funds could not be used for any sectarian purposes. While religious activities cannot be the essential thrust of a grant, an application will not be ineligible where sectarian activities are only incidental or attenuated to the overall project purpose for which funding is requested. Applicants for whom this policy may be relevant should read the policy that was published at 60 FR 66491, Dec. 22, 1995.

Completeness of Application. TIIAP will initially review all proposals to determine whether all required elements are present and clearly identifiable. The required elements are listed and described in the Guidelines for Preparing Applications—Fiscal Year 1996 (Guidelines). Each of the required elements must be present and clearly identified for the proposal to be reviewed. Incomplete applications will be rejected.

Past Performance. Unsatisfactory performance of an applicant under prior Federal financial assistance awards may result in that applicant's proposal not being considered for funding.

Delinquent Federal Debts. No award of Federal funds shall be made to an applicant who has an outstanding delinquent Federal debt until:

1. The delinquent account is paid in full;

2. A negotiated repayment schedule is established and at least one payment is received; or

3. Other arrangements satisfactory to the Department of Commerce are made.

Program Categories

Introduction. The fiscal year 1996 TIIAP grant program is divided into three categories: Demonstration projects, Access projects, and Planning projects. NTIA will award approximately 65% of the funds in this program to support Demonstration projects, approximately 30% of the funds to support Access projects, and approximately 5% of the funds to support Planning projects, unless the quality and/or number of submissions in any of these categories does not, in NTIA's judgment, merit the proposed allocation of funds. Proposals will be evaluated and selected according to specific criteria (see the ''Evaluation Criteria'' section in this Notice).

Demonstration Projects. The primary goal of Demonstration projects is to demonstrate new, high-impact, useful applications of information infrastructure which hold significant potential for replication in other communities. The projects must deploy, use, and evaluate innovative applications of information infrastructure to address a particular problem or set of problems in real-world environments. Projects selected in this category will have a high potential to serve as models* for other communities and to demonstrate results within the grant period.

Demonstration projects must focus on the application of information technology to specific needs or problems, rather than on the technology itself. Every application for a Demonstration project must clearly describe how using information infrastructure is expected to result in measurably improved outcomes, such as lowering the cost of health care or improving student performance.

Successful Demonstration applicants must complete their projects within 12–24 months.

Information on Demonstration projects previously funded by TIIAP can be retrieved electronically (see the ''Electronic Information'' sub-section in this Notice) or by contacting the TIIAP office. Applicants are reminded that evaluation criteria for Demonstration projects change from year to year.

Note: No award in the Demonstration projects category will exceed $750,000.

Access Projects. The primary goal of Access projects is to provide underserved* communities, populations, or geographic areas with greater access to the benefits of the National Information Infrastructure (NII).* Access projects emphasize serving groups of people who have not been adequately served in the past and increasing their access to services and information. Access projects place greater emphasis on reducing disparities than on innovation. Hence, an Access project may build on or emulate a successful model which has gained widespread acceptance in the field.

As is the case with Demonstration projects, the focus of Access projects is on the application of technology to specific needs or problems, rather than on technology itself. Every Access application must clearly describe how using information infrastructure is expected to result in measurably improved outcomes, such as lowering the cost of health care or improving student performance.

Successful Access applicants must complete their projects within 12–18 months.

Examples of Access projects that have received funding in the past are the creation of wide-area networks within school systems or districts and the provision of Internet access to an isolated group or population. Information on current Access projects can be retrieved electronically (see the ''Electronic Information'' sub-section in this Notice) or by contacting the TIIAP office. Applicants are reminded that evaluation criteria for Access projects change from year to year.

Note: No award in the Access projects category will exceed $250,000.

Planning Projects. The primary goal of Planning projects is to enable organizations, or groups of organizations, to develop strategies for the enhanced application of information infrastructure. Planning projects provide opportunities to bring coalitions together to form firm foundations on which to implement information infrastructure equitably, to examine the opportunities that investment in information infrastructure creates, to aggregate demand for telecommunications services among multiple organizations, and to understand the needs of potential end users. Planning projects are encouraged for rural or underserved populations where an enhanced telecommunications infrastructure could provide greater economic opportunity.

The end result of a Planning project should be a credible plan for deploying and using information infrastructure and sufficient support from the community to implement the plan. Proposals in this category must include clear descriptions of (1) the planning process or methodology to be employed and (2) the expected outcomes of the process.

Successful Planning applicants must complete their projects within 9–12 months.

One example of a Planning project that has received funding in the past is the design, testing, and documentation of a scalable planning model for a city-wide advanced information

infrastructure. Another example of a funded Planning project is the development of a statewide strategic plan for networking state agencies, educational organizations, industry, health care, and other public service providers so that opportunities for equitably providing services to a state's widely dispersed population can be shared. Information on current Planning projects can be retrieved electronically (see the ''Electronic Information'' subsection in this Notice) or by contacting the TIIAP office. Applicants are reminded that evaluation criteria for Planning projects change from year to year.

Note: No award in the Planning projects category will exceed $100,000.

Project Funding Priorities

In fiscal year 1996, TIIAP will support projects in four broad application groups*: Community-wide Networking, Health, Lifelong Learning, and Public Services. In all of these groups, TIIAP is committed to supporting projects that will use the NII to promote services to, and/or to encourage greater participation in the NII by, traditionally underserved populations.

Community-wide Networking. These are multi-purpose projects that allow members of a community to share information resources and improve communication. Community-wide networking projects must link services or provide information resources across multiple application groups or subgroups. Examples include, but would not be limited to, connecting local schools with public libraries, connecting local businesses with job retraining programs, and/or connecting citizens to a variety of social service programs or information resources.

Health. Projects involving the use of telecommunications in the delivery of health and mental health services, public health, home health care, provision of health information to the public, or the education and training of health professionals. Examples of projects could include, but would not be limited to: community health information networks for sharing clinical, financial, and administrative information among hospitals, clinics, public health departments, and other organizations; telemedicine systems that extend medical expertise to underserved areas and/or into the home; and networks or information services aimed at disease prevention, health promotion, and health education.

Lifelong Learning. Projects in this group are divided into three subgroups.

Pre-School and K–12 Education. Projects that bring educational materials or instruction to pre-school and K–12 students or that permit those students to participate in educational activities via telecommunications. Related activities such as professional development of pre-school and K–12 teachers and administrators also fall within this subgroup, as do projects that intend to improve the administration of pre-school and K–12 education.

Higher Education. Projects involving the delivery of college-level courses (including graduate courses); provision of continuing or adult education; or activities such as professional development for community college or university professors or administrators.

Library and Lifelong Learning Services. Projects that bring information, education, and enrichment services on-line through public libraries, museums, cultural centers, literacy organizations, or other non-profit organizations. This sub-group also includes teaching adults basic literacy and job skills.

Public Services. Projects in this group are divided into two subgroups.

Human Services. Projects aimed at improving the delivery of services such as public and subsidized housing, food assistance, child welfare, day care, substance abuse prevention and counseling, job counseling and training, poverty relief, legal assistance, or shelter providing protection from domestic violence. Examples include, but would not be limited to, networks that facilitate coordination and collaboration among public and/or community-based organizations; projects that improve agency responsiveness by providing direct electronic access to information on available services; and projects that employ information technology creatively to promote self-sufficiency among individuals and families.

Public Safety. Projects aimed at increasing the effectiveness of police and fire departments or other entities involved in providing public safety services. Examples may include those that link public safety agencies located in a single geographic area to increase efficiency and share resources, or those that provide information in a timely manner to ''first-response officials,'' such as police officers, emergency medical technicians, and firefighters. Other projects might link agencies with information resources, or provide community outreach services, regarding safety issues and procedures.

TIIAP will also support projects that promote the accessibility and usability of the NII for persons with disabilities. Such projects are expected to fit into one of the four broad application groups described above.

The Guidelines booklet provides more information on selecting a group and/or subgroup for your application.

Evaluation Criteria

Demonstration projects will be evaluated against nine criteria. While each criterion is weighted equally, the following three criteria are qualifying criteria. Demonstration project applicants must fully meet each qualifying criterion. If an application is deemed inadequate on any one of these, it will be not be further evaluated.

1. Problem Definition
2. Technical Approach
3. Ability to Serve as a Model

Projects judged to be qualified will then be fully evaluated on all nine criteria, which include the following additional six criteria.

4. Applicant Qualifications
5. Partnerships and Community Support
6. Support for End Users
7. Evaluation and Dissemination
8. Reducing Disparities in Access to and Use of the NII
9. Budget

Access projects will also be evaluated against nine criteria. While each criterion is weighted equally, the following two criteria are qualifying criteria. Access project applicants must fully meet both qualifying criteria. If an application is deemed inadequate on either of them, it will not be further evaluated.

1. Problem Definition
2. Reducing Disparities in Access to and Use of the NII

Projects judged to be qualified will then be fully evaluated on all nine criteria, which include the following additional seven criteria.

3. Technical Approach
4. Applicant Qualifications
5. Partnerships and Community Support
6. Support for End Users
7. Evaluation and Dissemination
8. Sustainability
9. Budget

Planning projects will be evaluated against seven criteria. While each criterion is weighted equally, the following two criteria are qualifying criteria. Planning project applicants must fully meet both qualifying criteria. If an application is deemed inadequate on either of them, it will not be further evaluated.

1. Problem Definition
2. Partnerships and Community Support

Projects judged to be qualified will then be fully evaluated on all seven criteria, which include the following additional five criteria.

3. Reducing Disparities in Access to and Use of the NII

4. Applicant Qualifications
5. Support for End Users
6. Evaluation and Dissemination
7. Budget

Explanations of Evaluation Criteria

1. Problem Definition. Applicants must clearly link the proposed project to a specific problem or problems in one or more of the application groups or sub-groups described in the ''Project Funding Priorities'' section in this Notice.

The need(s) or problem(s) to be addressed should be thoroughly documented, including end-user demographics and target audiences to be served. Applicants must explain how the use of advanced telecommunications and information technology will contribute to the solution of the problem(s) and identify the clear and measurable results expected as an outcome of the project. The scope of the project must meet TIIAP eligibility criteria (see the ''Eligibility'' section in this Notice).

For example, health care providers in rural areas may be required to spend a disproportionate amount of time in travel to visit homebound patients, when the time could be better spent interacting with patients or upgrading their skills. Using an interactive video system to meet with patients and to take continuing medical education courses could reduce the travel time burden, improving the efficiency of health care delivery and making it possible for nurses to develop new skills cost-effectively.

2. Technical Approach. TIIAP defines technical quality as the application of appropriate information technology consistent with the vision of a nationwide, seamless, interactive network of networks, not as innovation for its own sake. Therefore, a project proposed to TIIAP must demonstrate a knowledge of, and a realistic approach to, issues of interoperability* and scalability.* It is essential that the proposal be specific about how the proposed system would work, how the proposed system would operate with other systems, and how the system would be maintained and/or upgraded as needed.

NTIA expects applicants to consider carefully safeguards to protect the privacy of the end users and beneficiaries* of the project. It is essential that the proposal address the privacy and confidentiality of user data if this is relevant. For example, an applicant proposing a project dealing with individually identifiable information (student grades, medical records, etc.) will be required to describe the mechanism(s) to be used for protecting the confidentiality of such information and the privacy of the individuals involved.

3. Applicant Qualifications. Applicants must present evidence of qualifications and experience essential to the successful completion of the project. The applicant should clearly describe the experience of its key project personnel in addressing information- and technology-related issues. The applicant should also describe the qualifications of project partners.

4. Partnerships and Community Support. Proposals must provide evidence of public and/or private sector support and involvement. The extent to which applicants have included diverse sectors of the community in project design and development will be considered an integral part of the proposal. Applicants are also expected to coordinate with other entities in their states. A proposal should present a clear discussion of who the partners will be, what their respective roles in the project will be, what benefits each expects to receive, and what each partner will contribute to the project in the form of financial support, personnel, or other resources. In addition, applicants must provide documentation of the partners' commitment to the project, including letters of commitment from the partners to the applicant describing their roles and contributions.

5. Support for End Users. Projects supported by TIIAP must demonstrate a high degree of attention to the needs, skills, working conditions, and living environments of the targeted end users. Applicants must clearly define the end users, including demographic or other statistical information. Plans for training end users and/or upgrading their skills must be clearly delineated. Applicants should explain clearly how the project will provide end users with easily accessible, useful information, and how end users will benefit from the services offered. Proposals should include evidence of a significant degree of end-user involvement in the design and planning of projects.

6. Evaluation and Dissemination. Every project proposed to TIIAP must present a clearly defined evaluation plan with specific criteria for measuring the effectiveness of the project in reaching its intended audience and in improving outcomes. The applicant must identify specific evaluation instruments to be employed for this purpose. The proposed budget should include sufficient funds to perform a thorough and useful evaluation. In conjunction with the evaluation strategy, TIIAP will review the applicant's plan for disseminating the knowledge gained as a result of implementing the project. Applicants should demonstrate a willingness to share information about their projects with interested parties, to host site visits, and to participate in technology demonstrations.

7. Reducing Disparities in Access to and Use of the NII. The applicant must identify existing disparities, supported by specific quantitative data, and must clearly describe a plan to redress these disparities. The applicant must be sensitive to and take into consideration the local environment of a traditionally underserved population in developing a targeted strategy to overcoming existing barriers. For example, unique sharing arrangements or innovative strategies may be proposed to redress disparities in access. Additionally, the applicant must clearly define the project's beneficiaries; in so doing, the applicant should include demographic and other data as appropriate.

8. Budget. The applicant must fully explain each budget item, including both the Federal and the non-Federal shares of the total project cost, in the manner outlined in the Guidelines. Reviewers will closely examine the degree to which the proposed budget is reasonable in relation to the scope of the project. The budget must be reasonable for the tasks proposed, and the relationship of items in the budget to the project narrative must be clearly drawn.

9. Ability to Serve as a Model. (Applicable only to Demonstration projects.) Demonstration projects must show a strong potential to serve as a model for others to follow. These projects should be innovative, not necessarily in terms of the technology to be used, but in the application of technology in a particular setting, to serve a particular population, or to solve a particular problem. Demonstration applicants must explain the degree to which the projects can be replicated, or can serve as catalysts for activities, in other settings or for other populations. Because of this requirement that a Demonstration project show the potential for applicability in other contexts, reviewers will also examine the economic viability of the proposed model. Demonstration applicants must also explain how the impact of their projects can extend beyond the scope of the original activity funded by TIIAP. For example, the project's innovative application of a particular technology may stimulate the creation of a market for products and services based on that technology. In addition, the program

will examine whether a subsequent evaluation of the project can contribute significantly to our understanding of how the NII can be used to improve the delivery of a wide range of social services and promote economic development.

10. Sustainability. (Applicable only to Access projects.) The applicant must clearly describe a credible plan for sustaining the project beyond the period of Federal funding. Such a plan should include discussion of anticipated ongoing expenses and potential sources or mechanisms for securing needed funds. In evaluating the plan, reviewers will consider the economic circumstances of the community or communities to be served by the proposed project.

Selection Process

NTIA will publish a notice in the Federal Register listing all applications received by TIIAP. Listing an application in such a notice merely acknowledges receipt of an application that will compete for funding with other applications. Publication does not preclude subsequent return or disapproval of the application, nor does it ensure that the application will be funded.

Each eligible application will first be reviewed by a panel of outside readers, who have demonstrated expertise in both the programmatic and technological aspects of the application. The review panels will evaluate applications according to the evaluation criteria provided in this Notice and make non-binding recommendations to the program staff. Working with the staff, the TIIAP Director prepares a slate of recommended grant awards for the Selection Official, who is the NTIA Administrator.

In making recommendations, the Director will consider the following selection factors:

1. The evaluations of the outside reviewers;
2. The geographic distribution of the proposed grant awards;
3. The variety of technologies employed by the proposed grant awards;
4. The extent to which the proposed grant awards represent a reasonable distribution of funds across application groups and sub-groups;
5. The promotion of access to and use of the information infrastructure for underserved groups;
6. Avoidance of redundancy and conflicts with the initiatives of other Federal agencies; and
7. The availability of funds.

The NTIA Administrator selects the applications to be negotiated for possible grant award taking into consideration the Director's recommendations and the degree to which the slate of applications, taken as a whole, satisfies the program's stated purposes as set forth in the section entitled ''Program Purposes.'' After applications have been selected in this manner, negotiations will take place between TIIAP staff and the applicant. These negotiations are intended to resolve any differences that exist between the applicant's original request and what TIIAP proposes to fund. Not all applicants who are contacted for negotiation will necessarily receive a TIIAP award. Final selections made by the Administrator will be based upon the Director's recommendations and the degree to which the slate of applications, taken as a whole, satisfies the program's stated purposes upon the conclusion of negotiations.

Eligible Costs

Eligible Costs. Allowable costs incurred under approved projects shall be determined in accordance with applicable Federal cost principles, i.e., OMB Circular A–21, A–87, A–122, or Appendix E of 45 CFR Part 74. If included in the approved project budget, TIIAP will allow costs for personnel, fringe benefits, computer hardware and software, other end-user equipment, telecommunication services and related equipment, consultants and other contractual services, travel, rental of office equipment, furniture and space, supplies, etc. that are reasonable and directly related to the project. Construction costs are not eligible.

Note that costs that are ineligible for TIIAP support may not be included as part of the applicant's matching fund contribution.

Indirect Costs. The total dollar amount of the indirect costs proposed in an application under this program must not exceed the indirect cost rate negotiated and approved by a cognizant Federal agency prior to the proposed effective date of the award or 100 percent of the total proposed direct costs dollar amount in the application, whichever is less.

Award Period

Successful applicants for Demonstration grants will have between 12 and 24 months to complete their projects. Successful applicants for Access grants will have between 12 and 18 months to complete their projects. Successful applicants for Planning grants will have between 9 and 12 months to complete their projects. The completion time will vary depending on the complexity of the project.

Other Information

Electronic Information. Information about NTIA and TIIAP, including this document and the Guidelines, can be retrieved electronically via the Internet through ftp, gopher and the World Wide Web.

To reach the ftp server, ftp to ftp.ntia.doc.gov. Use the login name of 'anonymous' and use your E-mail address as the password. Change to the /pub/grantinfo directory to find TIIAP files.

To reach the gopher server, point your gopher client at gopher.ntia.doc.gov and login as 'gopher'.

To reach the www server, use http://www.ntia.doc.gov/tiiap/tiiap.html to reach the TIIAP Home Page.

TIIAP can also be reached via electronic mail at tiiap@ntia.doc.gov.

Application Forms. Standard Forms 424 (OMB Approval Number 0348–0044), Application for Federal Assistance; 424A (OMB Approval Number 0348–0043), Budget Information—Non-Construction Programs; and 424B (OMB Approval Number 0348–0040), Assurances—Non-Construction Programs, (Rev 4–92), and other Department of Commerce forms shall be used in applying for financial assistance. These forms are included in the Guidelines, which can be obtained by contacting NTIA by telephone, fax, or electronic mail, as described in the 'Address' section above. TIIAP requires one original and five copies of the application. Applicants for whom the submission of five copies presents financial hardship may submit one original and two copies of the application. In addition, all applicants are required to submit a copy of their application to their state Single Point of Contact (SPOC) offices, if they have one. (For information on contacting state SPOC offices, refer to page 39 of the Guidelines.)

Because of the high level of public interest in projects supported by TIIAP, the program anticipates receiving requests for copies of applications. Applicants are hereby notified that the applications they submit are subject to the Freedom of Information Act. Applicants may identify sensitive information and label it ''confidential'' to assist NTIA in making disclosure determinations.

Type of Funding Instrument. The funding instrument for awards under this program shall be a grant.

Authority and Funding Availability. The National Telecommunications and Information Administration (NTIA), Department of Commerce, serves as the President's principal adviser on

telecommunications and information policy. NTIA's functions were codified as part of the Telecommunications Authorization Act of 1992, Pub. L. No. 102–538, 106 Stat. 3533, 47 U.S.C. §§ 901–04 (1993).

Anticipated Funding. NTIA issues this Notice subject to the authority of the continuing resolution (P.L. 104–99). NTIA anticipates making grant awards provided that funding for TIIAP is continued beyond the March 15, 1996, expiration date of the continuing resolution. This continuing resolution includes $21.5 million for TIIAP. Issuance of grants is subject to the availability of FY 1996 funds. Further notice will be made in the Federal Register about the final status of funding for this program at the appropriate time.

Federal Policies and Procedures. Recipients and subrecipients are subject to all applicable Federal laws and Federal and Department of Commerce policies, regulations, and procedures applicable to Federal financial assistance awards.

Pre-Award Activities. If an applicant incurs any project costs prior to the project start date negotiated at the time the award is made, it does so solely at its own risk of not being reimbursed by the government. Applicants are hereby notified that, notwithstanding any oral or written assurance that they may have received, there is no obligation on the part of the Department of Commerce or NTIA to cover pre-award costs.

No Obligation For Future Funding. If an application is selected for funding, the Department of Commerce has no obligation to provide any additional future funding in connection with that award. Renewal of an award to increase funding or extend the period of performance is at the total discretion of the Department of Commerce.

Name Check Review. All non-profit applicants are subject to a name check review process. Name checks are intended to reveal if any key individuals associated with the applicant have been convicted of or are presently facing criminal charges such as fraud, theft, perjury, or other matters that significantly reflect on the applicant's management, honesty, or financial integrity.

Primary Applicant Certifications. All primary applicants must submit a completed Form CD–511, ''Certifications Regarding Debarment, Suspension and Other Responsibility Matters; Drug-Free Workplace Requirements and Lobbying,'' and the following explanations are hereby provided:

1. Nonprocurement Debarment and Suspension—Prospective participants (as defined at 15 CFR Part 26, Section 105) are subject to 15 CFR Part 26, ''Nonprocurement Debarment and Suspension'' and the related section of the certification form prescribed above applies;

2. Drug-Free Workplace—Grantees (as defined at 15 CFR Part 26, Section 605) are subject to 15 CFR Part 26, Subpart F, ''Governmentwide Requirements for Drug-Free Workplace (Grants)'' and the related section of the certification form prescribed above applies;

3. Anti-Lobbying—Persons (as defined at 15 CFR Part 28, Section 105) are subject to the lobbying provisions of 31 U.S.C. § 1352, ''Limitation on use of appropriated funds to influence certain Federal contracting and financial transactions,'' and the lobbying section of the certification form prescribed above applies to applications/bids for grants, cooperative agreements, and contracts for more than $100,000, and loans and loan guarantees for more than $150,000, or the single family maximum mortgage limit for affected programs, whichever is greater; and

4. Anti-Lobbying Disclosure—Any applicant that has paid or will pay for lobbying in connection with a covered Federal action, such as the awarding of any Federal contract, the making of any Federal grant, the making of any Federal loan, the entering into of any cooperative agreement, or the extension, continuation, renewal, amendment, or modification of any Federal contract, grant, loan, or cooperative agreement using any funds must submit an SF–LLL, ''Disclosure of Lobbying Activities'' (OMB Control Number 0348–0046), as required under 15 CFR part 28, Appendix B.

Lower Tier Certifications. Recipients shall require applicants/bidders for subgrants, contracts, subcontracts, or other lower tier covered transactions at any tier under the award to submit, if applicable, a completed Form CD–512, ''Certifications Regarding Debarment, Suspension, Ineligibility and Voluntary Exclusion-Lower Tier Covered Transactions and Lobbying'' and disclosure form SF–LLL, ''Disclosure of Lobbying Activities.'' Form CD–512 is intended for the use of recipients and should not be transmitted to DOC. SF–LLL submitted by any tier recipient or subrecipient should be submitted to DOC in accordance with the instructions contained in the award document.

False Statements. A false statement on an application is grounds for denial or termination of funds and grounds for possible punishment by a fine or imprisonment as provided in 18 U.S.C. § 1001.

Intergovernmental Review. Applications under this program are subject to Executive Order 12372, ''Intergovernmental Review of Federal Programs.'' It has been determined that this notice is a not a significant rule under Executive Order 12866.

Definitions

Application group or sub-group. The specific sector whose problems or issues a proposed project addresses. The application groups and sub-groups are described in the section on ''Project Funding Priorities'' in this Notice.

Content development. The creation of information resources, such as databases or World Wide Web sites, for the purpose of dissemination through one or more on-line services.

End user. A person who customarily employs or seeks access to, rather than provides, information infrastructure. An end user may be a consumer of information (e.g., a member of the public employing a touch-screen public access terminal); may be involved in an interactive communication with other end users; or may use information infrastructure to provide services to the public.

Grant. Financial assistance award authorized by law to support autonomous projects or activities of state or local governments, or non-profit groups. This term does not include direct United States government cash assistance to an individual, a subsidy, a loan, a loan guarantee, or insurance.

Information infrastructure. The telecommunication networks, computers, other end-user devices, software, standards, and skills that collectively enable people to connect to each other and to a vast array of services and information resources.

Interactivity. The capacity of a communications system to allow end users to communicate directly with other users, either in real time (as in a video teleconference) or on a store-and-forward basis (as with electronic mail), or to seek and gain access to information on an on-demand basis, as opposed to a broadcast basis.

Interoperability. The condition achieved among information and communication systems when information (i.e., data, voice, image, audio, or video) can be easily and cost-effectively shared across acquisition, transmission, and presentation technologies, equipment, and services.

Model. A project that employs a novel, innovative, and replicable approach. The ultimate impact of a model project should extend far beyond

the community or communities to be served by the project itself.

National Information Infrastructure (NII). A Federal policy initiative to facilitate and accelerate the development and utilization of the nation's information infrastructure. The Administration envisions the NII as a seamless web of communications networks, computers, databases, and consumer electronics that will put vast amounts of information at users' fingertips. For more information on various aspects of the NII initiative, see The National Information Infrastructure: Agenda for Action, 58 Fed. Reg. 49,025 (September 21, 1993).

Project beneficiary. Individual or organization deriving benefits from a project's outcome(s). A project beneficiary may also, but not necessarily, be a project end user.

Scalability. The ability of a system to accommodate a significant growth in the size of the system (i.e., services provided, end users served) without the need for substantial redesign. A scalable approach that is demonstrated on a small scale can also be applied on a larger scale.

Underserved. End users who are subject to barriers that limit or prevent their access to either social services or information infrastructure. In terms of information infrastructure, these barriers may be geographic, economic, physical, linguistic, or cultural. For example, a rural community may be physically isolated from circuits adequate to allow for data access; inner city neighborhoods may contain large numbers of potential end users for whom ownership of computer hardware is unlikely; individuals with disabilities may have the need for different types of interfaces when manipulating hardware and software.

Larry Irving,

*Assistant Secretary for Communications and Information.*

[FR Doc. 96–4642 Filed 2–28–96; 8:45 am]

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February 29, 1996

# Part VII

# Department of Transportation

**Research and Special Programs Administration**

**49 CFR Part 171**

**Extension of Authority for Open-Head Fiber Drum Packaging for Liquid Hazardous Materials; Final Rule**

## DEPARTMENT OF TRANSPORTATION

## Research and Special Programs Administration

## 49 CFR Part 171

**[Docket No. HM–221A; Amdt. No. 171–139]**

**RIN 2137–AC77**

## Extension of Authority for Open-Head Fiber Drum Packaging for Liquid Hazardous Materials

**AGENCY:** Research and Special Programs Administration (RSPA), DOT.

**ACTION:** Final rule.

**SUMMARY:** In accordance with Section 406 of the ''Interstate Commerce Commission Sunset Act'' (the Act), RSPA is extending the authority to ship certain liquid hazardous materials in open-head fiber drums that do not meet performance-oriented packaging standards for hazardous materials in Packing Group III. This extension expires on the later of September 30, 1997, or the date on which funds are authorized to be appropriated for the hazardous materials transportation program for fiscal years beginning after September 30, 1997.

**EFFECTIVE DATE:** This final rule is effective on October 1, 1996.

**FOR FURTHER INFORMATION CONTACT:** Frazer C. Hilder, Office of the Chief Counsel, Research and Special Programs Administration, U.S. Department of Transportation, 400 Seventh Street, SW, Washington, DC 20590–0001; telephone 202–366–4400.

**SUPPLEMENTARY INFORMATION:** On January 9, 1996, RSPA published a notice of proposed rulemaking (NPRM) under Docket No. HM–221A, Notice No. 96–1 (61 FR 688), proposing to extend for one additional year, until September 30, 1997, authority for the transportation of certain liquid hazardous materials in non-specification open-head fiber drums that do not meet the performance-oriented packaging standards in the Hazardous Materials Regulations (HMR), 49 CFR Parts 171–180.

In the absence of this extension, these open-head fiber drums would not be authorized for shipping these hazardous materials after September 30, 1996. See 49 CFR 171.14(a)(1)(iii). This is because, in a final rule in Docket No. HM–181 (56 FR 66124, Dec. 20, 1991), RSPA eliminated most instances where the HMR had previously authorized the use of non-specification packagings, including packagings for environmentally hazardous substances such as polychlorinated biphenyls. However, to allow for an orderly transition to the performance-oriented packaging standards for non-bulk packagings also adopted in HM–181, RSPA authorized packagings meeting the HM–181 performance standards to be used immediately but provided a five-year phase-out period ending on September 30, 1996, for previously authorized packagings.

In the January 9, 1996 NPRM, RSPA proposed to add a new paragraph (a)(2)(iii) to 49 CFR 171.14 to carry out the mandate in paragraphs (a) and (b) of Section 406 of the Interstate Commerce Commission Sunset Act (Pub. L. 104–88, Dec. 29, 1995). Section 406 reads as follows:

**Sec. 406. Fiber Drum Packaging.**

(a) In General.—In the administration of chapter 51 of title 49, United States Code, the Secretary of Transportation shall issue a final rule within 60 days after the date of the enactment of this Act authorizing the continued use of fiber drum packaging with a removable head for the transportation of liquid hazardous materials with respect to those liquid hazardous materials transported by such drums pursuant to regulations in effect on September 30, 1991, if—

(1) the packaging is in compliance with regulations of the Secretary under the Hazardous Materials Transportation Act as in effect on September 30, 1991; and

(2) the packaging will not be used for the transportation of hazardous materials that include materials which are poisonous by inhalation or materials in Packing Groups I and II.

(b) Expiration.—The regulation referred to in subsection (a) shall expire on the later of September 30, 1997, or the date on which funds are authorized to be appropriated to carry out chapter 51 of title 49, United States Code (relating to transportation of hazardous materials), for fiscal years beginning after September 30, 1997.

(c) STUDY.—

(1) IN GENERAL.—Within 90 days after the date of enactment of this Act, the Secretary shall contract with the National Academy of Sciences to conduct a study—

(A) to determine whether the requirements of section 5103(b) of title 49, United States Code (relating to regulations for safe transportation), as they pertain to fiber drum packaging with a removable head can be met for the transportation of liquid hazardous materials (with respect to those liquid hazardous materials transported by such drums pursuant to regulations in effect on September 30, 1991) with standards (including fiber drum industry standards set forth in a June 8, 1992, exemption application submitted to the Department of Transportation), other than the performance-oriented packaging standards adopted under docket number HM–181 contained in part 178 of title 49, Code of Federal Regulations; and

(B) to determine whether a packaging standard (including such fiber drum industry standards), other than performance-oriented packaging standards, will provide an equal or greater level of safety for the transportation of liquid hazardous materials than would be provided if such performance-oriented packaging standards were in effect.

(2) COMPLETION.—The study shall be completed before March 1, 1997, and shall be transmitted to the Committee on Commerce, Science, and Transportation of the Senate and the Transportation and Infrastructure Committee of the House of Representatives.

(d) SECRETARIAL ACTION.—By September 30, 1997, the Secretary shall issue final regulations to determine what standards should apply to fiber drum packaging with a removable head for transportation of liquid hazardous materials (with respect to those liquid hazardous materials transported by such drums pursuant to regulations in effect on September 30, 1991) after September 30, 1997. In issuing such regulations, the Secretary shall give full and substantial consideration to the results of the study conducted in subsection (c).

In the NPRM, RSPA proposed an extension of the transition period for continued use of non-specification open-head fiber drums for certain liquid hazardous materials until September 30, 1997. Recognizing that the transition period might have to be extended beyond that date, RSPA stated its intention to revisit that issue in the 1997 rulemaking required by section (d).

RSPA requested comments on the proposed rule, including the possible extension of the transition period to the later of two dates, September 30, 1997, or the date on which funds are authorized to be appropriated to carry out the Federal hazardous materials transportation program for fiscal years beginning after September 30, 1997. RSPA stated that it would ''consider alternatives that commenters wish to suggest for handling the uncertain length of this extended transition period * * *'' See 61 FR 689.

In response to the NPRM, RSPA received 13 comments. Several industry commenters opposed the extension itself on safety, fairness and uniformity grounds. Those commenters, however, recognized that RSPA has no discretion and must grant the extension. Some commenters requested similar extensions beyond October 1, 1996, for use of other non-specification packagings (e.g., plastic or steel) for transportation of hazardous materials. Consideration of other extensions is beyond the scope of this rulemaking.

Two of the commenters supported the proposed one-year extension of the transition period. Other commenters, including members of Congress, opposed the unqualified one-year extension and stated that RSPA should follow the mandate in section (c) and recognize an alternative to the

September 30, 1997 date for termination of the fiber drum use extension.

In light of these comments, RSPA is adopting the proposed rule with modifications. It is deleting the phrase, ''Until September 30, 1997,'' from the beginning of the extension language and adding the following separate sentence to address the duration of the extension: ''This authorization expires on the later of September 30, 1997, or the date on which funds are authorized to be appropriated to carry out chapter 51 of title 49, United States Code (related to transportation of hazardous materials), for fiscal years beginning after September 30, 1997.'' RSPA is adding the following language to provide a point of contact about the authorization date: ''Information concerning this funding authorization date may be obtained by contacting the Office of the Associate Administrator.''

Regulatory Analyses and Notices

*A. Executive Order 12866 and DOT Regulatory Policies and Procedures*

This final rule is not considered a significant regulatory action under section 3(f) of Executive Order 12866 and was not reviewed by the Office of Management and Budget. This rule is not considered significant under the regulatory policies and procedures of the Department of Transportation (44 FR 11034; February 26, 1979). Because of the minimal economic impact of this final rule, preparation of a regulatory impact analysis or a regulatory evaluation is not warranted.

*B. Executive Order 12612*

This final rule has been analyzed in accordance with the principles and criteria in Executive Order 12612 (''Federalism''). The Federal hazardous material transportation law (49 U.S.C. 5101–5127) contains an express preemption provision that preempts State, local and Indian tribe requirements on certain covered subjects. Covered subjects are:

(i) the designation, description, and classification of hazardous material;

(ii) the packing, repacking, handling, marking, and placarding of hazardous material;

(iii) the preparation, execution, and use of shipping documents pertaining to hazardous material and requirements related to the number, contents, and placement of those documents;

(iv) the written notification, recording, and reporting of the unintentional release in transportation; and

(v) the design, manufacturing, fabricating, marking, maintenance, reconditioning, repairing, or testing of a packaging or a container represented, marked, certified, or sold as qualified for use in transporting hazardous material.

This rule concerns the packaging authorized for certain hazardous materials and, therefore, preempts State, local, or Indian tribe requirements concerning this subject unless the non-Federal requirements are ''substantively the same as'' the Federal requirements. RSPA lacks discretion in this area, and preparation of a federalism assessment is not warranted.

Section 5125(b)(2) of 49 U.S.C. provides that if DOT issues a regulation concerning any of the covered subjects after November 16, 1990, DOT must determine and publish in the Federal Register the effective date of Federal preemption. That effective date may not be earlier than the 90th day, and not later than two years, following the date of issuance of the final rule. RSPA has determined that the effective date of Federal preemption for the continued authorization of these fiber drums will be October 1, 1996.

*C. Regulatory Flexibility Act*

This final rule extends the authority for shipment of certain liquid hazardous materials in open-head fiber drums that do not meet the performance standards in the HMR. I certify that this rule will not have a significant economic impact on a substantial number of small entities.

*D. Paperwork Reduction Act*

There are no information collection requirements in this final rule.

*E. Regulation Identifier Number (RIN)*

A regulation identifier number (RIN) is assigned to each regulatory action listed in the Unified Agenda of Federal Regulations. The Regulatory Information Service Center publishes the Unified Agenda in April and October of each year. The RIN number contained in the handling of this document can be used to cross-reference this action with the Unified Agenda.

List of Subjects in 49 CFR Part 171

Exports, Hazardous materials transportation, Imports, Reporting and recordkeeping requirements.

In consideration of the foregoing, 49 CFR part 171 is amended as follows:

## PART 171—GENERAL INFORMATION, REGULATIONS, AND DEFINITIONS

1. The authority citation for part 171 continues to read as follows:

Authority: 49 U.S.C. 5101–5127; 49 CFR 1.53.4

2. In § 171.14, a new paragraph (a)(2)(iii) is added to read as follows:

**§ 171.14 Transitional provisions for implementing requirements based on the UN Recommendations.**

* * * * *

(a) * * *

(2) * * *

(iii) *Non-specification fiber drums.* A non-specification fiber drum with a removable head is authorized for a liquid hazardous material in Packing Group III that is not poisonous by inhalation for which the packaging was authorized under the requirements of Part 172 or Part 173 of this subchapter in effect on September 30, 1991. This authorization expires on the later of September 30, 1997, or the date on which funds are authorized to be appropriated to carry out chapter 51 of title 49, United States Code (related to transportation of hazardous materials), for fiscal years beginning after September 30, 1997. Information concerning this funding authorization date may be obtained by contacting the Office of the Associate Administrator for Hazardous Materials Safety.

* * * * *

Issued in Washington, DC, on February 22, 1996, under authority delegated in 49 CFR Part 1.

D.K. Sharma,

*Administrator.*

[FR Doc. 96–4628 Filed 2–28–96; 8:45 am]

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Part VIII

# Department of Housing and Urban Development

**Office of the Assistant Secretary for Community Planning and Development**

**24 CFR Part 574**

**Regulatory Reinvention: Streamlining the Housing Opportunities for Persons With AIDS Program; Final Rule**

**DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT**

**Office of the Assistant Secretary for Community Planning and Development**

**24 CFR Part 574**

**[Docket No. FR–4030–F–01]**

**RIN 2506–AB78**

## Regulatory Reinvention: Streamlining the Housing Opportunities for Persons With AIDS Program

**AGENCY:** Office of the Assistant Secretary for Community Planning and Development, HUD.

**ACTION:** Final rule.

**SUMMARY:** This final rule amends HUD's regulations for the Housing Opportunities for Persons With AIDS (HOPWA) program. In an effort to comply with the President's regulatory reform initiatives, this rule will streamline the HOPWA regulations by eliminating provisions that are duplicative of statutes or are otherwise unnecessary. This final rule will make the regulations more concise.

**EFFECTIVE DATE:** April 1, 1996.

**FOR FURTHER INFORMATION CONTACT:** Fred Karnas, Jr., Director, Office of HIV/AIDS Housing, Room 7154, Department of Housing and Urban Development, 451 Seventh Street, SW, Washington, DC 20410, telephone number (202) 708–1934 (this is not a toll-free number). A telecommunications device for hearing- and speech-impaired persons (TDD) is available at 1–800–877–8339 (Federal Information Relay Service).

**SUPPLEMENTARY INFORMATION:** On March 4, 1995, President Clinton issued a memorandum to all Federal departments and agencies regarding regulatory reinvention. In response to this memorandum, the Department of Housing and Urban Development conducted a page-by-page review of its regulations to determine which can be eliminated, consolidated, or otherwise improved. HUD has determined that the regulations for the HOPWA Program can be improved and streamlined by eliminating unnecessary provisions.

Several provisions in the regulations repeat statutory language from the AIDS Housing Opportunity Act (42 U.S.C. 12901). It is unnecessary to maintain statutory requirements in the Code of Federal Regulations (CFR), since those requirements are otherwise fully accessible and binding. Furthermore, if regulations contain statutory language, HUD must amend the regulations whenever Congress amends the statute. Therefore, this final rule removes repetitious statutory language and replaces it with a citation to the specific statutory section for easy reference.

Similarly, the environmental review procedures section (§ 574.510) contains language that repeats requirements that are stated in 24 CFR 50.3. Therefore, that section is being revised to remove the repetitive language and substitute a cross-reference to the applicable provision in that existing rule. Removal of this language does not alter the procedures to be followed.

In addition, some provisions in the regulations are not regulatory requirements. For example, several sections in the regulations contain nonbinding guidance or explanations. While this information is very helpful to recipients, HUD will more appropriately provide this information through handbook guidance or other materials rather than maintain it in the CFR.

Lastly, two changes are being made to rectify an oversight when the part was recently revised as part of a larger rulemaking (see 61 FR 5198, February 9, 1996). The waiver provision (§ 574.4) is removed, since Departmental waivers were consolidated at 24 CFR part 5. The section dealing with nondiscrimination (§ 574.603) is being revised to reinsert language limiting the application of the provision to persons who are otherwise eligible for the program, i.e., persons who have AIDS or related diseases and their families.

### Justification for Final Rulemaking

HUD generally publishes a rule for public comment before issuing a rule for effect, in accordance with its own regulations on rulemaking in 24 CFR part 10. However, part 10 provides for exceptions to the general rule if the agency finds good cause to omit advance notice and public participation. The good cause requirement is satisfied when prior public procedure is ''impracticable, unnecessary, or contrary to the public interest'' (24 CFR 10.1). HUD finds that good cause exists to publish this rule for effect without first soliciting public comment. This rule merely removes unnecessary regulatory provisions and does not establish or affect substantive policy. Therefore, prior public comment is unnecessary.

### Other Matters

*Regulatory Flexibility Act*

The Secretary, in accordance with the Regulatory Flexibility Act (5 U.S.C. 605(b)), has reviewed and approved this final rule, and in so doing certifies that this rule will not have a significant economic impact on a substantial number of small entities. This rule merely streamlines regulations by removing unnecessary provisions. The rule will have no adverse or disproportionate economic impact on small businesses.

*Environmental Impact*

This rulemaking does not have an environmental impact. This rulemaking simply amends an existing regulation by consolidating and streamlining provisions. It does not change the environmental review procedures or the physical impact of the program or the projects assisted under the regulations being amended. A Finding of No Significant Impact with respect to the environment was made in accordance with HUD regulations in 24 CFR part 50 that implement section 102(2)(C) of the National Environmental Policy Act of 1969 (42 U.S.C. 4332) at the time of development of regulations implementing the HOPWA program. That finding remains applicable to this rule and is available for public inspection between 7:30 a.m. and 5:30 p.m. weekdays in the Office of the Rules Docket Clerk, Office of General Counsel, Room 10276, Department of Housing and Urban Development, 451 Seventh Street, SW, Washington, DC.

*Executive Order 12612, Federalism*

The General Counsel, as the Designated Official under section 6(a) of Executive Order 12612, *Federalism*, has determined that this rule will not have substantial direct effects on States or their political subdivisions, or the relationship between the Federal government and the States, or on the distribution of power and responsibilities among the various levels of government. No programmatic or policy changes will result from this rule that would affect the relationship between the Federal Government and State and local governments.

*Executive Order 12606, The Family*

The General Counsel, as the Designated Official under Executive Order 12606, *The Family*, has determined that this rule will not have the potential for significant impact on family formation, maintenance, or general well-being, and thus is not subject to review under the Order. No significant change in existing HUD policies or programs will result from promulgation of this rule.

### List of Subjects in 24 CFR Part 574

AIDS, Community facilities, Disabled, Emergency shelter, Grant programs—health programs, Grant programs—housing and community development,

Grant programs—social programs, Homeless, Housing, Low and moderate income housing, Nonprofit organizations, Rent subsidies, Reporting and recordkeeping requirements, Technical assistance.

Accordingly, part 574 of title 24 of the Code of Federal Regulations is amended, as follows:

## PART 574—HOUSING OPPORTUNITIES FOR PERSONS WITH AIDS

1. The authority citation for part 574 continues to read as follows:

Authority: 42 U.S.C. 3535(d) and 12901–12912.

**§ 574.1 [Removed]**

2. Section 574.1 is removed.

**§ 574.2 [Removed]**

3. Section 574.2 is removed.

4. In § 574.3, the definitions for ''City'', ''Low-income individual'', ''Metropolitan statistical area'', ''Project sponsor'', and ''State'' are revised to read as follows:

**§ 574.3 Definitions.**

* * * * *

*City* has the meaning given it in section 102(a) of the Housing and Community Development Act of 1974 (42 U.S.C. 5302).

* * * * *

*Low-income individual* has the meaning given it in section 853(3) of the AIDS Housing Opportunity Act (42 U.S.C. 12902).

*Metropolitan statistical area* has the meaning given it in section 853(5) of the AIDS Housing Opportunity Act (42.U.S.C. 12902).

* * * * *

*Project sponsor* means any nonprofit organization or governmental housing agency that receives funds under a contract with the grantee to carry out eligible activities under this part. The selection of project sponsors is not subject to the procurement requirements of 24 CFR 85.36.

* * * * *

*State* has the meaning given it in section 853(9) of the AIDS Housing Opportunity Act (42 U.S.C. 12902).

* * * * *

**§ 574.4 [Removed]**

5. Section 574.4 is removed.

6. Section 574.110 is added, to read as follows:

**§ 574.110 Overview of formula allocations.**

The formula grants are awarded upon submission and approval of a consolidated plan, pursuant to 24 CFR part 91, that covers the assistance to be provided under this part. Certain states and cities that are the most populous unit of general local government in eligible metropolitan statistical areas will receive formula allocations based on their State or metropolitan population and proportionate number of cases of persons with AIDS. They will receive funds under this part (providing they comply with 24 CFR part 91) for eligible activities that address the housing needs of persons with AIDS or related diseases and their families (see § 574.130(b)).

**§ 574.150 [Removed]**

7. Section 574.150 is removed.

8. Section 574.200 is amended by adding paragraphs (c) and (d), to read as follows:

**§ 574.200 Amounts available for competitive grants.**

* * * * *

(c) The competitive grants are awarded based on applications, as described in subpart C of this part, submitted in response to a Notice of Funding Availability published in the Federal Register. All States and units of general local government and nonprofit organizations are eligible to apply for competitive grants to fund projects of national significance. Only those States and units of general local government that do not qualify for formula allocations are eligible to apply for competitive grants to fund other projects.

(d) If HUD makes a procedural error in a funding competition that, when corrected, would warrant funding of an otherwise eligible application, HUD will select that application for potential funding when sufficient funds become available.

**§ 574.230 [Removed]**

9. Section 574.230 is removed.

10. Section 574.240 is revised to read as follows:

**§ 574.240 Application requirements.**

Applications must comply with the provisions of the Department's Notice of Funding Availability (NOFA) for the fiscal year published in the Federal Register in accordance with 24 CFR part 12. The rating criteria, including the point value for each, are described in the NOFA, including criteria determined by the Secretary.

**§ 574.250 [Removed]**

11. Section 574.250 is removed.

**§ 574.310 [Amended]**

12. In § 574.310, paragraph (d) is amended by removing from the introductory text the words, ''determined in accordance with section 3(a) of the United States Housing Act of 1937 and 24 CFR 813.106. Under these authorities, each resident must pay as rent'', and adding in their place the words, ''which is''.

13. In § 574.320, paragraph (b) is revised to read as follows:

**§ 574.320 Additional standards for rental assistance.**

* * * * *

(b) With respect to shared housing arrangements, the rent charged for an assisted family or individual shall be in relation to the size of the private space for that assisted family or individual in comparison to other private space in the shared unit, excluding common space. An assisted family or individual may be assigned a pro rata portion based on the ratio derived by dividing the number of bedrooms in their private space by the number of bedrooms in the unit. Participation in shared housing arrangements shall be voluntary.

14. Section 574.510 is revised to read as follows:

**§ 574.510 Environmental procedures and standards.**

Before any amounts under this program are used to acquire, rehabilitate, convert, lease, repair or construct properties to provide housing, HUD shall perform a review in accord with 24 CFR part 50, which implements the National Environmental Policy Act and the related Federal environmental laws and authorities listed under 24 CFR 50.4. In performing its environmental review, HUD may use previously issued environmental reviews prepared by other local, State, or federal agencies for the proposed property. The grantee will cooperate in providing these documents. HUD must, however, conduct the environmental analysis and prepare the environmental review and be responsible for the required environmental findings. An environmental assurance shall be provided by an applicant for formula allocations or competitive awards in accordance with 24 CFR 50.3(i).

15. Section 574.540 is revised to read as follows:

**§ 574.540 Deobligation of funds.**

HUD may deobligate all or a portion of the amounts approved for eligible activities if such amounts are not expended in a timely manner, or the proposed activity for which funding was approved is not provided in accordance with the approved application or action plan and the requirements of this regulation. HUD may deobligate any

amount of grant funds that have not been expended within a three-year period from the date of the signing of the grant agreement. The grant agreement may set forth other circumstances under which funds may be deobligated or sanctions imposed.

16. Section 574.603 is amended by revising the introductory text, to read as follows:

**§ 574.603 Nondiscrimination and equal opportunity.**

Within the population eligible for this program, the nondiscrimination and equal opportunity requirements set forth in 24 CFR part 5 and the following requirements apply:

* * * * *

Dated: February 21, 1996.

Andrew M. Cuomo,

*Assistant Secretary for Community Planning and Development.*

[FR Doc. 96–4678 Filed 2–28–96; 8:45 am]

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# Part IX

# Department of Housing and Urban Development

**Office of the Assistant Secretary for Community Planning and Development**

**24 CFR Part 965**

**Streamlining Public Housing Maintenance and Operation Rules; Final Rule**

**DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT**

**Office of the Assistant Secretary for Public and Indian Housing**

**24 CFR Part 965**

**[Docket No. FR–3928–F–02]**

**RIN 2577–AB55**

## Streamlining Public Housing Maintenance and Operation Rules

**AGENCY:** Office of the Assistant Secretary for Public and Indian Housing, HUD.

**ACTION:** Final rule.

**SUMMARY:** This final rule amends HUD's regulations in 24 CFR part 965 on public housing maintenance and operations to streamline and simplify necessary requirements and to eliminate unnecessary requirements. This final rule takes into consideration comments received on the September 25, 1995 proposed rule.

**EFFECTIVE DATE:** April 29, 1996.

**FOR FURTHER INFORMATION CONTACT:** William C. Thorson, Director, Administration and Maintenance Division, Office of Public Housing Management, Room 4214, U.S. Department of Housing and Urban Development, 451 Seventh Street, SW, Washington, DC 20410. Telephone (202) 708–4703; Hearing- or speech-impaired persons may use the Telecommunications Devices for the Deaf (TDD) by contacting the Federal Information Relay Service on 1–800–877–TDDY (1–800–877–8339) or (202) 708–9300. (Other than the ''800'' TDD number, the telephone numbers are not toll-free.)

**SUPPLEMENTARY INFORMATION:**

I. Background

In accordance with President Clinton's regulatory reinvention efforts and Executive Order 12866 (Regulatory Planning and Review) issued by President Clinton on September 30, 1993, HUD commenced a comprehensive review of all of its regulations to determine which regulations could be eliminated and streamlined. One such review was with respect to 24 CFR 965, PHA-Owned or Leased Projects-Maintenance and Operation.

HUD published a proposed rule on September 25, 1995 (60 FR 49480) announcing its intention to (1) eliminate one subpart F—Modernization of Oil Fired Heating Plants, (2) simplify and revise subpart C—Energy Audits and Energy Conservation Measures, subpart D—Individual Metering of Utilities for Existing PHA-Owned Projects, and subpart E—Tenant Allowances for Utilities, (3) consolidate two subparts, subpart A—Preemption of State Prevailing Wage Requirements With Respect to Maintenance and Operation and subpart H—Lead- Based Paint Poisoning Prevention, applicable to other housing programs in a new ''general'' part that will be applicable to all programs, (4) revise subpart I—Fire Safety at a later date to reflect new statutory requirements and (5) make only a minor technical change to subpart B—Required Insurance Coverage.

II. Differences Between This Final Rule and September 25, 1995 Proposed Rule

Intervening events have changed the need for some of these changes. Subpart F was removed by another rulemaking that eliminated obsolete provisions, 61 FR 47263. Subpart A is being amended by a pending rulemaking that focuses primarily on streamlining public and Indian housing modernization regulations. Therefore, this final rule focuses on making the changes to simplify subparts C, D, and E.

Four changes were made at this final rule stage to the revisions proposed in the rule published on September 25, 1995.

1. The Department has revised § 965.407 to require that PHAs with mastermeter systems must reevaluate these systems by making a cost-benefit analysis at least every 5 years. The final rule changes the period from 36 months to 5 years to be consistent with the energy audit and the Comprehensive Grant Program five year plan.

2. The Department has revised § 965.503 to streamline the paragraph by eliminating the unnecessary language in the last sentence which goes beyond the basic requirement.

3. The Department has revised § 965.504(b) to streamline the paragraph by eliminating unnecessary descriptive language beyond the basic requirement.

4. The Department has revised § 965.507(b) to clarify that increases in utility allowances due to rate changes are not subject to the 60-day notice requirement in § 965.502(c).

III. Discussion of Public Comments on Proposed Rule

The Department received public comments from ten organizations (seven public housing agencies (PHAs), one PHA trade organization and two labor organizations) in response to the September 25, 1995 proposed rule. One PHA commended HUD's efforts in simplifying part 965, recommending no revisions. The following discussion summarizes the remaining comments and provides HUD's responses to those comments.

*Subpart A—Preemption of State Prevailing Wage Requirements With Respect to Maintenance and Operation of Projects*

*Comment:* While two PHAs concurred with the decision to retain this subpart, two labor organizations strongly objected. Both organizations cited their opposition to the rule when it was originally issued in 1988. They contended that lower rates do not equate to lower project costs and that the capacity of the U.S. Department of Labor to produce timely and accurate wage reports is questionable because of budget cuts. One organization also suggested that the rule creates an unfunded mandate upon the States.

*Response:* The Department appreciates the positions of the two labor organizations. However, the Department points out that this issue was the subject of considerable debate at the time the proposed and final rules were issued in 1987/1988. It was also, as one of the organizations correctly pointed out, challenged in the courts. The court found in favor of the Department. The Department continues to believe that the rule is in the best interest of the program and declines to eliminate this subpart.

*Subpart C—Energy Audits and Energy Conservation Measures*

*Comment:* One PHA and a PHA trade organization suggested that HUD should not require all PHAs, regardless of size or performance, to conduct energy audits and undertake energy conservation measures. The commenter suggested that standard and high performing PHAs and PHAs with fewer than 250 units should be exempt unless there is evidence that intervention by HUD is required on energy conservation issues. Alternatively, it was recommended that if HUD requires all PHAs to conduct the described activities, it should guarantee funding. Another PHA raised similar concerns about funding of audits.

*Response:* First, it should be noted that HUD pays operating subsidies through the Performance Funding System (PFS) (24 CFR part 990) for HAs that are not able to cover all operating costs, including utilities, through rents charged to residents. Currently, the utility component of the operating subsidy now exceeds $1 billion annually. The appropriation for operating subsidy for Fiscal Years 1994 and 1995 was only sufficient to fund

PHAs at 95 and 96 percent, respectively, of their eligibility level. It is not guaranteed that future appropriations will result in a higher percentage funding. Hence, the Department must ensure that PHAs conduct audits as one means of holding down operating costs, including the cost of utilities, and ensuring that the limited funds available for operations are used as efficiently as possible.

It is erroneous to assume that a designation as a standard or high performer under the Public Housing Management Assessment Program automatically equates to having a good energy management program. HUD's Office of Inspector General (OIG) recently completed an Audit Report entitled ''Review of Opportunities To Reduce Utility Costs At Public Housing Authorities.'' The OIG report was based on visits to approximately 63 PHAs, which manage 41 percent of the 1.3 million public housing units nationally. The OIG indicated that despite past efforts:

> Opportunities for reducing utility costs continue to exist and are cost effective in many instances due to ongoing improvements in technology. Housing authority managers need to be aware of, evaluate, and give maximum consideration to these ongoing and new opportunities when managing their utility costs. Because of improvements in technology, managing utilities is a continuous process that requires an ongoing energy management program.

The purpose of an energy audit is to identify the types and costs of energy use in order to understand how energy is being used and to identify and analyze alternatives that could substantially reduce costs. PHAs that are effectively managing their utility consumption are going through a dynamic process—evaluating current usage, implementing recommendations for energy cost savings, and monitoring the results. A good energy audit process can provide a PHA with many benefits and insights and does not have to be very complex. In fact, some utility companies do energy audits for free.

The Department views a regularly scheduled audit to be an essential tool in reducing operating costs for PHAs and the Federal government. Since the Federal government is paying the cost of operations, including the utility costs, and the technology is constantly evolving, it is reasonable and cost effective to require periodic energy audits by all PHAs, regardless of size or performance. The Department considers five year intervals to be the maximum time between regularly scheduled audits, given the continuous changes that are occurring in the energy industry.

It should be further noted that the requirement to perform an audit is not new. It has been in the existing regulation for more than a decade. The existing regulation required an audit within 36 months from the effective date of the regulation (which was published in 1980) and prior to a PHA's application for Comprehensive Modernization. The proposed rule simply updates the existing requirement for the audit to establish regular intervals when audits must be done.

HUD has eliminated most of the process-oriented requirements (e.g., most of the requirements in the current §§ 965.303 and 965.304) in favor of a results-oriented requirement (e.g., an audit performed in accordance with State requirements). HUD also has eliminated the provision in § 965.302 of the proposed rule involving HUD approval of energy audit standards.

A PHA can, as one commenter recommended, do the energy audit in conjunction with its five-year action plan which is required for the Comprehensive Grant Program. The modernization regulations are being amended to require the incorporation of the energy conservation measures resulting from an audit performed under this subpart.

With regard to the funding of energy audits, the Department believes that a sound energy management program is fundamental to good property management and that energy audits are a cost of doing business that should be included as a part of an agency's operating budget. For that reason, the final rule, in keeping with the existing rule, provides that the audit is to be paid out of operating funds to the extent feasible, and, where operating funds are insufficient, the cost of the audit is an eligible cost for inclusion in a modernization program. The Department disagrees that this existing requirement represents an unfunded mandate.

The Department recommends that PHAs give serious consideration to §§ 965.305(b) and 965.308 of this rule. These sections, and the applicable sections of part 990, provide incentives for PHAs to undertake energy improvements through energy performance contracts using non-HUD financing. Under this arrangement, a PHA may contract with an energy service company to do an audit of its properties and submit a proposal for the installation of energy conservation measures using non-HUD financing. If the proposal is approved by HUD, HUD will freeze the three year rolling base in the utility component of the PFS for the utilities involved. The PHA must use at least 50 percent of the consumption savings to pay debt service on the non-HUD financing, retaining any balance.

The PHA benefits three ways from such an arrangement: (1) It generates additional income from the savings not used for debt service payments; (2) energy improvements are shifted from the PHA's modernization program to non-HUD financing, thus, enabling the PHA to do more work with its limited modernization funds; and (3) the PHA is able to provide a better environment for its residents. As pointed out in the OIG report, ''energy efficiency can become a competitive advantage for housing authorities who want to attract residents through increased resident comfort and decreased operating costs.'' Effective energy use becomes a more critical issue as the public housing community faces drastic changes in the nature of how they are funded and operate. More information regarding energy performance contracting and incentives to reduce utility costs is contained in HUD Notice PIH 95–26, issued April 28, 1995.

*Comment:* The PHA trade organization suggested that if HUD continues to require energy audits of all PHAs, it should not require that HUD review and pre-approve all energy performance contracts, especially for standard and high-performing PHAs. Instead, the organization suggests that the review of such contracts should be part of the independent public accountant (IPA) process, as the Department proposes for the calculation of resident utility allowances.

*Response:* Energy performance contracting is relatively new in the public housing community and involves a more sophisticated two-step procurement process that most PHAs have not used and are not familiar with. Further, HUD must agree that the proposed savings will materialize and be sufficient to amortize the debt service in order to commit the Department to freezing the utility component of the PFS for periods of up to 12 years. This represents a significant financial investment on the part of the government. For these reasons, the Department is retaining the pre-approval of energy performance contracts.

*Comment:* One PHA recommended that HUD should develop criteria to determine which housing authorities are in need of an energy audit. HUD should evaluate a housing authority's energy performance by comparing consumption and cost to a standard. This evaluation would determine which housing

authorities need to conduct an energy audit. The PHA contends that PHAs send in so many reports and information to HUD that the energy performance of a housing authority could be determined by HUD.

*Response:* As noted above, energy audits are an essential part of an ongoing energy management system. Technology is constantly changing, and it is necessary to have properties reevaluated on a regular basis. The recommendation is to rely on HUD to make a determination after the PHA has been determined to be energy inefficient. The Department does not believe that this is an effective management approach, particularly given dwindling resources for PHAs and HUD.

Further, the Department does receive consumption information for PHAs in conjunction with the PFS. The information reflects gross consumption and is not broken down by individual projects or buildings, both of which can vary significantly. HUD also requests utility information in conjunction with its routine monitoring. Such monitoring is done only on a limited basis. As noted above, the Department does not believe that it is a good management practice for PHAs to wait for HUD to determine energy efficiency. Given the cost to the Department for operations, including utilities, it will retain the audit requirement which has been in effect since 1980.

*Subpart D—Individual Metering of Utilities for Existing PHA-Owned Projects*

*Comment:* One PHA indicated that residents should be required to pay for utilities and that the PHA should charge a modest rent based on the number of bedrooms in the unit.

*Response:* The Department agrees that individual metering is an important component of a complete energy management system for property managers. However, conversions should only be mandatory if they are cost effective, and this subpart is written accordingly. The payment of rent by public housing residents is, by law, based on income and is not addressed by this rule.

*Comment:* One PHA indicated that it agrees that individual metering is advisable, but that PHAs are capable of implementing these steps independent of HUD regulation. The PHA questions the change in the requirement in the existing rule which advises the PHA to consult with residents, whereas the proposed rule makes such consultation mandatory.

*Response:* The Department agrees that many PHAs are capable of implementing the provisions contained in the rule. However, it is also true that many PHAs are reluctant to do so to avoid confrontational situations with the residents and the possibility of litigation which has accompanied such conversions in the past. Also, HUD pays the utility costs in these cases and needs to ensure that the conversions are accomplished where it is cost effective to do so. Because of the cost to the Federal government, the Department is retaining this requirement. With regard to consultation, residents are both the PHA's and the Department's ultimate customer. The Department believes the conversion to individual metering, while a good management practice, will nevertheless significantly impact the residents and, therefore, they must be consulted.

*Comment:* One PHA noted the requirement in § 965.407 for PHAs with mastermeter systems to reevaluate these systems by making a cost-benefit analysis at least every 36 months. The PHA recommends a five-year cycle to be consistent with the energy audit and the Comprehensive Grant Program five year plan.

*Response:* The Department agrees with this recommendation and has made the revision in the final rule.

*Subpart E—Resident Allowances for Utilities*

*Comment:* One PHA noted that a HUD Field Office did a Utility Review and made a finding because it was not surcharging residents for water for a washing machine. The PHA indicates that it felt that it had a right to determine what appliances required surcharges but notes that the regulation does not specifically mention washing machines. The PHA also recommended that we specifically exempt elderly high rises in the South from the requirement to charge residents for the energy to use a PHA-furnished air conditioner. In the instant case, the individual units had heat pumps for each unit which provide heat and air conditioning. The PHA did not think it was possible to establish fair surcharges because some run the air conditioning all the time while others only run the air conditioning occasionally.

*Response:* The Department agrees that if laundromats are not available, washing machines in units are reasonable, but not without limitation. As has been described above, the amount of operating subsidies is limited. It is, therefore, essential that PHAs undertake measures to conserve energy. One such way is to establish an allowance ''which reflects a reasonable consumption of utilities by an energy-conservative household of modest circumstances * * *.'' If the utility is paid by the PHA and the resident exceeds the allowance, the resident must be surcharged for the excess consumption. The regulation provides PHAs with considerable latitude in the development of allowances, within the basic framework described above. The Department plans to issue a guidebook in the near future to assist PHAs in developing utility allowances.

There is considerable debate as to the extent to which air conditioning should be considered an essential component. As noted earlier, the cost of utilities is in excess of $1 billion annually. Appropriations for the last two years have been, and for the foreseeable future, will be, insufficient to fund PHAs at 100 percent of their eligibility under the PFS. Including air conditioning in utility allowances beyond what is already specifically authorized would seriously and adversely impact the level of funding for other critical services such as maintenance. This will affect all PHAs around the nation, since it will reduce the overall amount of operating subsidy which is fixed. The Department's approach to this difficult issue is to allow the capital costs to be an eligible expense while requiring the resident to pay the costs of the energy associated with its use. The Department is retaining the language in § 965.505(e) as described in the proposed rule.

*Comment:* Two PHAs indicate that HUD's criteria for establishing utility allowances as required in § 965.505(d)(1) through (9) should be simplified. One PHA indicated that the nine factors that must be taken into account have intimidated many PHAs into commissioning expensive engineering studies in an effort to comply. The PHA suggests that the language be simplified to allow for the use of previous consumption histories. Another PHA suggested that the factors be advisory.

*Response:* As noted in § 965.505(c), the Department leaves the complexity and elaborateness of the methods for establishing utility allowances to the discretion of the PHA. HUD believes that the choice in methodology is best handled at the local level where the PHA can use a procedure suitable to available data and local experience. As such, the rule does not intend to require only the use of the engineering method to establish allowances. While the Department believes that the engineering method will more closely approximate the objective stated in

§ 965.505(a), the consumption method is acceptable and may be appropriate for some PHAs. The Department believes that the ''factors'' cited, which have been in effect for more than a decade, are reasonable and necessary to be ''considered'' regardless of the methodology used in order to meet the objective in § 965.505(a).

*Comment:* One PHA indicated that § 965.507 states that utility allowances must be revised if the rate changes more than 10 percent between annual reviews. Utility rates can be volatile, particularly if a housing authority purchases a utility, such as natural gas, directly from the well-head. This could necessitate changing utility allowances several times during a twelve month period. The PHA recommends revision only on an annual basis. This PHA, along with others, indicated that if HUD wants PHAs to be competitive in the housing market, air conditioning must be considered a legitimate cost and should be included in the utility allowances.

*Response:* To the extent that the market is volatile, any savings/cost should be passed along to the resident. The Department previously discussed the financial impact of including air conditioning in utility allowances. No changes are being made to this section.

*Comment:* One PHA noted an apparent inconsistency. Specifically, § 965.502(c) requires residents to receive a 60-day notice of any change to the utility allowances. Section 965.507(b), on the other hand, requires that in cases of increases in utility allowances due to rate changes, adjustments shall be effective the first day of the month following the month in which the last rate change taken into account in such revision became effective. The PHA suggested that it appears that increases due to rate changes are not subject to the 60-day notice requirement contained in § 965.502(c).

*Response:* The PHA is correct that revisions due to rate changes pursuant to § 965.507(b) are not subject to the 60 day notice requirement. The Department has added clarifying language.

Other Matters

*Environmental Impact*

A Finding of No Significant Impact with respect to the environment for this rule was made at the proposed rule stage in accordance with HUD regulations at 24 CFR part 50, which implement section 102(2)(C) of the National Environmental Policy Act of 1969. The Finding of No Significant Impact remains applicable to this final rule and is available for public inspection between 7:30 a.m. and 5:30 p.m. weekdays in the Office of the Rules Docket Clerk, Office of the General Counsel, Department of Housing and Urban Development, Room 10276, 451 Seventh Street, SW., Washington, DC 20410.

*Regulatory Flexibility Act*

The Secretary, in accordance with the Regulatory Flexibility Act (5 U.S.C. 605(b)), has reviewed this rule before publication and by approving it certifies that this rule would not have a significant economic impact on a substantial number of small entities because the rule reduces and streamlines existing requirements. PHAs will have fewer mandatory requirements. No new additional requirements are being imposed by this rule.

*Executive Order 12612, Federalism*

The General Counsel, as the Designated Official under section 6(a) of Executive Order 12612, Federalism, has determined that this rule does not have ''federalism implications'' because it does not have substantial direct effect on the States (including their political subdivisions), or on the distribution of power and responsibilities among the various levels of government.

*Executive Order 12606, The Family*

The General Counsel, as the Designated Official under Executive Order 12606, The Family, has determined that the rule will not have a significant impact on family formation, maintenance, and well being, and, therefore, is not subject to review under the order. No significant changes in existing HUD policies or programs will result from promulgation of this rule as those policies and programs relate to family concerns.

*Catalog of Federal Domestic Assistance*

The Catalog of Federal Domestic Assistance Program number assigned to this program is 14.850.

List of Subjects in 24 CFR Part 965

Energy conservation, Government procurement, Grant programs—housing and community development, Lead poisoning, Loan programs—housing and community development, Public housing, Reporting and recordkeeping requirements, Utilities.

Accordingly, 24 CFR part 965 is amended as follows:

## PART 965—PHA-OWNED OR LEASED PROJECTS—MAINTENANCE AND OPERATION

1. The authority citation for part 965 continues to read as follows:

Authority: 42 U.S.C. 1437, 1437a, 1437d, 1437g, and 3535(d). Subpart H is also issued under 42 U.S.C. 4821–4846.

### § 965.205 [Amended]

2. In subpart B, in § 965.205, paragraph (a) is amended by removing the parenthetical phrase ''(in section 305 of the ACC)'' from the first sentence that immediately follows the paragraph heading.

3. Subpart C is revised to read as follows:

### Subpart C—Energy Audits and Energy Conservation Measures

Sec.

965.301 Purpose and applicability.
965.302 Requirements for energy audits.
965.303 [Reserved].
965.304 Order of funding.
965.305 Funding.
965.306 Energy conservation equipment and practices.
965.307 Compliance schedule.
965.308 Energy performance contracts.

## Subpart C—Energy Audits and Energy Conservation Measures

### § 965.301 Purpose and applicability.

(a) *Purpose.* The purpose of this subpart C is to implement HUD policies in support of national energy conservation goals by requiring PHAs to conduct energy audits and undertake certain cost-effective energy conservation measures.

(b) *Applicability.* The provisions of this subpart apply to all PHAs with PHA-owned housing, but they do not apply to Indian Housing Authorities. (For similar provisions applicable to Indian housing, see part 950 of this chapter.) No PHA-leased project or Section 8 Housing Assistance Payments Program project, including a PHA-owned Section 8 project, is covered by this subpart.

### § 965.302 Requirements for energy audits.

All PHAs shall complete an energy audit for each PHA-owned project under management, not less than once every five years. Standards for energy audits shall be equivalent to State standards for energy audits. Energy audits shall analyze all of the energy conservation measures, and the payback period for these measures, that are pertinent to the type of buildings and equipment operated by the PHA.

**§ 965.303 [Reserved]**

**§ 965.304 Order of funding.**

Within the funds available to a PHA, energy conservation measures should be accomplished with the shortest pay-back periods funded first. A PHA may make adjustments to this funding order because of insufficient funds to accomplish high-cost energy conservation measures (ECM) or where an ECM with a longer pay-back period can be more efficiently installed in conjunction with other planned modernization. A PHA may not install individual utility meters that measure the energy or fuel used for space heating in dwelling units that need substantial weatherization, when installation of meters would result in economic hardship for residents. In these cases, the ECMs related to weatherization shall be accomplished before the installation of individual utility meters.

**§ 965.305 Funding.**

(a) The cost of accomplishing cost-effective energy conservation measures, including the cost of performing energy audits, shall be funded from operating funds of the PHA to the extent feasible. When sufficient operating funds are not available for this purpose, such costs are eligible for inclusion in a modernization program, for funding from any available development funds in the case of projects still in development, or for other available funds that HUD may designate to be used for energy conservation.

(b) If a PHA finances energy conservation measures from sources other than modernization or operating reserves, such as a loan from a utility entity or a guaranteed savings agreement with a private energy service company, HUD may agree to provide adjustments in its calculation of the PHA's operating subsidy eligibility under the PFS for the project and utility involved based on a determination that payments can be funded from the reasonably anticipated energy cost savings (See § 990.107(g) of this chapter).

**§ 965.306 Energy conservation equipment and practices.**

In purchasing original or, when needed, replacement equipment, PHAs shall acquire only equipment that meets or exceeds the minimum efficiency requirements established by the U.S. Department of Energy. In the operation of their facilities, PHAs shall follow operating practices directed to maximum energy conservation.

**§ 965.307 Compliance schedule.**

All energy conservation measures determined by energy audits to be cost effective shall be accomplished as funds are available.

**§ 965.308 Energy performance contracts.**

(a) *Method of procurement.* Energy performance contracting shall be conducted using one of the following methods of procurement:

(1) Competitive proposals (see 24 CFR 85.36(d)(3)). In identifying the evaluation factors and their relative importance, as required by § 85.36(d)(3)(i) of this title, the solicitation shall state that technical factors are significantly more important than price (of the energy audit); or

(2) If the services are available only from a single source, noncompetitive proposals (see 24 CFR 85.36(d)(4)(i)(A)).

(b) *HUD Review.* Solicitations for energy performance contracting shall be submitted to the HUD Field Office for review and approval prior to issuance. Energy performance contracts shall be submitted to the HUD Field Office for review and approval before award.

4. Subpart D is revised to read as follows:

**Subpart D—Individual Metering of Utilities for Existing PHA-Owned Projects**

Sec.

965.401 Individually metered utilities.
965.402 Benefit/cost analysis.
965.403 Funding.
965.404 Order of conversion.
965.405 Actions affecting residents.
965.406 Benefit/cost analysis for similar projects.
965.407 Reevaluations of mastermeter systems.

## Subpart D—Individual Metering of Utilities for Existing PHA-Owned Projects

**§ 965.401 Individually metered utilities.**

(a) All utility service shall be individually metered to residents, either through provision of retail service to the residents by the utility supplier or through the use of checkmeters, unless:

(1) Individual metering is impractical, such as in the case of a central heating system in an apartment building;

(2) Change from a mastermetering system to individual meters would not be financially justified based upon a benefit/cost analysis; or

(3) Checkmetering is not permissible under State or local law, or under the policies of the particular utility supplier or public service commission.

(b) If checkmetering is not permissible, retail service shall be considered. Where checkmetering is permissible, the type of individual metering offering the most savings to the PHA shall be selected.

**§ 965.402 Benefit/cost analysis.**

(a) A benefit/cost analysis shall be made to determine whether a change from a mastermetering system to individual meters will be cost effective, except as otherwise provided in § 965.405.

(b) Proposed installation of checkmeters shall be justified on the basis that the cost of debt service (interest and amortization) of the estimated installation costs plus the operating costs of the checkmeters will be more than offset by reduction in future utilities expenditures to the PHA under the mastermeter system.

(c) Proposed conversion to retail service shall be justified on the basis of net savings to the PHA. This determination involves making a comparison between the reduction in utility expense obtained through eliminating the expense to the PHA for PHA-supplied utilities and the resultant allowance for resident-supplied utilities, based on the cost of utility service to the residents after conversion.

**§ 965.403 Funding.**

The cost to change mastermeter systems to individual metering of resident consumption, including the costs of benefit/cost analysis and complete installation of checkmeters, shall be funded from operating funds of the PHA to the extent feasible. When sufficient operating funds are not available for this purpose, such costs are eligible for inclusion in a modernization project or for funding from any available development funds.

**§ 965.404 Order of conversion.**

Conversions to individually metered utility service shall be accomplished in the following order when a PHA has projects of two or more of the designated categories, unless the PHA has a justifiable reason to do otherwise, which shall be documented in its files.

(a) In projects for which retail service is provided by the utility supplier and the PHA is paying all the individual utility bills, no benefit/cost analysis is necessary, and residents shall be billed directly after the PHA adopts revised payment schedules providing appropriate allowances for resident-supplied utilities.

(b) In projects for which checkmeters have been installed but are not being utilized as the basis for determining utility charges to the residents, no benefit/cost analysis is necessary. The checkmeters shall be used as the basis for utility charges, and residents shall be surcharged for excess utility use.

(c) Projects for which meter loops have been installed for utilization of

checkmeters shall be analyzed both for the installation of checkmeters and for conversion to retail service.

(d) Low- or medium-rise family units with a mastermeter system should be analyzed for both checkmetering and conversion to retail service, because of their large potential for energy savings.

(e) Low- or medium-rise housing for the elderly should next be analyzed for both checkmetering and conversion to retail service, since the potential for energy saving is less than for family units.

(f) Electric service under mastermeters for high-rise buildings, including projects for the elderly, should be analyzed for both use of retail service and of checkmeters.

**§ 965.405 Actions affecting residents.**

(a) Before making any conversion to retail service, the PHA shall adopt revised payment schedules, providing appropriate allowances for the resident-supplied utilities resulting from the conversion.

(b) Before implementing any modifications to utility services arrangements with the residents or charges with respect thereto, the PHA shall make the requisite changes in resident dwelling leases in accordance with 24 CFR part 966.

(c) PHAs must work closely with resident organizations, to the extent practicable, in making plans for conversion of utility service to individual metering, explaining the national policy objectives of energy conservation, the changes in charges and rent structure that will result, and the goals of achieving an equitable structure that will be advantageous to residents who conserve energy.

(d) A transition period of at least six months shall be provided in the case of initiation of checkmeters, during which residents will be advised of the charges but during which no surcharge will be made based on the readings. This trial period will afford residents ample notice of the effects the checkmetering system will have on their individual utility charges and also afford a test period for the adequacy of the utility allowances established.

(e) During and after the transition period, PHAs shall advise and assist residents with high utility consumption on methods for reducing their usage. This advice and assistance may include counseling, installation of new energy conserving equipment or appliances, and corrective maintenance.

**§ 965.406 Benefit/cost analysis for similar projects.**

PHAs with more than one project of similar design and utilities service may prepare a benefit/cost analysis for a representative project. A finding that a change in metering is not cost effective for the representative project is sufficient reason for the PHA not to perform a benefit/cost analysis on the remaining similar projects.

**§ 965.407 Reevaluations of mastermeter systems.**

Because of changes in the cost of utility services and the periodic changes in utility regulations, PHAs with mastermeter systems are required to reevaluate mastermeter systems without checkmeters by making benefit/cost analyses at least every 5 years. These analyses may be omitted under the conditions specified in § 965.406.

5. Subpart E is revised to read as follows:

**Subpart E—Resident Allowances for Utilities**

Sec.
965.501 Applicability.
965.502 Establishment of utility allowances by PHAs.
965.503 Categories for establishment of allowances.
965.504 Period for which allowances aare established.
965.505 Standards for allowances for utilities.
965.506 Surcharges for excess consumption of PHA-furnished utilities.
965.507 Review and revision of allowances.
965.508 Individual relief.

## Subpart E—Resident Allowances for Utilities

**§ 965.501 Applicability.**

(a) This subpart E applies to public housing, including the Turnkey III Homeownership Opportunities program. This subpart E also applies to units assisted under sections 10(c) and 23 of the U. S. Housing Act of 1937 (42 U.S.C. 1437 *et seq.*) as in effect before amendment by the Housing and Community Development Act of 1974 (12 U.S.C. 1706e) and to which 24 CFR part 900 is not applicable. This subpart E does not apply to Indian housing projects (see 24 CFR part 950).

(b) In rental units for which utilities are furnished by the PHA but there are no checkmeters to measure the actual utilities consumption of the individual units, residents shall be subject to charges for consumption by resident-owned major appliances, or for optional functions of PHA-furnished equipment, in accordance with § 965.502(e) and 965.506(b), but no utility allowance will be established.

**§ 965.502 Establishment of utility allowances by PHAs.**

(a) PHAs shall establish allowances for PHA-furnished utilities for all checkmetered utilities and allowances for resident-purchased utilities for all utilities purchased directly by residents from the utilities suppliers.

(b) The PHA shall maintain a record that documents the basis on which allowances and scheduled surcharges, and revisions thereof, are established and revised. Such record shall be available for inspection by residents.

(c) The PHA shall give notice to all residents of proposed allowances, scheduled surcharges, and revisions thereof. Such notice shall be given, in the manner provided in the lease or homebuyer agreement, not less than 60 days before the proposed effective date of the allowances or scheduled surcharges or revisions; shall describe with reasonable particularity the basis for determination of the allowances, scheduled surcharges, or revisions, including a statement of the specific items of equipment and function whose utility consumption requirements were included in determining the amounts of the allowances or scheduled surcharges; shall notify residents of the place where the PHA's record maintained in accordance with paragraph (b) of this section is available for inspection; and shall provide all residents an opportunity to submit written comments during a period expiring not less than 30 days before the proposed effective date of the allowances or scheduled surcharges or revisions. Such written comments shall be retained by the PHA and shall be available for inspection by residents.

(d) Schedules of allowances and scheduled surcharges shall not be subject to approval by HUD before becoming effective, but will be reviewed in the course of audits or reviews of PHA operations.

(e) The PHA's determinations of allowances, scheduled surcharges, and revisions thereof shall be final and valid unless found to be arbitrary, capricious, an abuse of discretion, or otherwise not in accordance with the law.

**§ 965.503 Categories for establishment of allowances.**

Separate allowances shall be established for each utility and for each category of dwelling units determined by the PHA to be reasonably comparable as to factors affecting utility usage.

**§ 965.504 Period for which allowances are established.**

(a) *PHA-furnished utilities.* Allowances will normally be established on a quarterly basis; however, residents may be surcharged on a monthly basis. The allowances

established may provide for seasonal variations.

(b) *Resident-purchased utilities.* Monthly allowances shall be established. The allowances established may provide for seasonal variations.

**§ 965.505 Standards for allowances for utilities.**

(a) The objective of a PHA in designing methods of establishing utility allowances for each dwelling unit category and unit size shall be to approximate a reasonable consumption of utilities by an energy-conservative household of modest circumstances consistent with the requirements of a safe, sanitary, and healthful living environment.

(b) Allowances for both PHA-furnished and resident-purchased utilities shall be designed to include such reasonable consumption for major equipment or for utility functions furnished by the PHA for all residents (e.g., heating furnace, hot water heater), for essential equipment whether or not furnished by the PHA (e.g., range and refrigerator), and for minor items of equipment (such as toasters and radios) furnished by residents.

(c) The complexity and elaborateness of the methods chosen by the PHA, in its discretion, to achieve the foregoing objective will depend upon the nature of the housing stock, data available to the PHA and the extent of the administrative resources reasonably available to the PHA to be devoted to the collection of such data, the formulation of methods of calculation, and actual calculation and monitoring of the allowances.

(d) In establishing allowances, the PHA shall take into account relevant factors affecting consumption requirements, including:

(1) The equipment and functions intended to be covered by the allowance for which the utility will be used. For instance, natural gas may be used for cooking, heating domestic water, or space heating, or any combination of the three;

(2) The climatic location of the housing projects;

(3) The size of the dwelling units and the number of occupants per dwelling unit;

(4) Type of construction and design of the housing project;

(5) The energy efficiency of PHA-supplied appliances and equipment;

(6) The utility consumption requirements of appliances and equipment whose reasonable consumption is intended to be covered by the total resident payment;

(7) The physical condition, including insulation and weatherization, of the housing project;

(8) Temperature levels intended to be maintained in the unit during the day and at night, and in cold and warm weather; and

(9) Temperature of domestic hot water.

(e) If a PHA installs air conditioning, it shall provide, to the maximum extent economically feasible, systems that give residents the option of choosing to use air conditioning in their units. The design of systems that offer each resident the option to choose air conditioning shall include retail meters or checkmeters, and residents shall pay for the energy used in its operation. For systems that offer residents the option to choose air conditioning, the PHA shall not include air conditioning in the utility allowances. For systems that offer residents the option to choose air conditioning but cannot be checkmetered, residents are to be surcharged in accordance with § 965.506. If an air conditioning system does not provide for resident option, residents are not to be charged, and these systems should be avoided whenever possible.

**§ 965.506 Surcharges for excess consumption of PHA-furnished utilities.**

(a) For dwelling units subject to allowances for PHA-furnished utilities where checkmeters have been installed, the PHA shall establish surcharges for utility consumption in excess of the allowances. Surcharges may be computed on a straight per unit of purchase basis (e.g., cents per kilowatt hour of electricity) or for stated blocks of excess consumption, and shall be based on the PHA's average utility rate. The basis for calculating such surcharges shall be described in the PHA's schedule of allowances. Changes in the dollar amounts of surcharges based directly on changes in the PHA's average utility rate shall not be subject to the advance notice requirements of this section.

(b) For dwelling units served by PHA-furnished utilities where checkmeters have not been installed, the PHA shall establish schedules of surcharges indicating additional dollar amounts residents will be required to pay by reason of estimated utility consumption attributable to resident-owned major appliances or to optional functions of PHA-furnished equipment. Such surcharge schedules shall state the resident-owned equipment (or functions of PHA-furnished equipment) for which surcharges shall be made and the amounts of such charges, which shall be based on the cost to the PHA of the utility consumption estimated to be attributable to reasonable usage of such equipment.

**§ 965.507 Review and revision of allowances.**

(a) *Annual review.* The PHA shall review at least annually the basis on which utility allowances have been established and, if reasonably required in order to continue adherence to the standards stated in § 965.505, shall establish revised allowances. The review shall include all changes in circumstances (including completion of modernization and/or other energy conservation measures implemented by the PHA) indicating probability of a significant change in reasonable consumption requirements and changes in utility rates.

(b) *Revision as a result of rate changes.* The PHA may revise its allowances for resident-purchased utilities between annual reviews if there is a rate change (including fuel adjustments) and shall be required to do so if such change, by itself or together with prior rate changes not adjusted for, results in a change of 10 percent or more from the rates on which such allowances were based. Adjustments to resident payments as a result of such changes shall be retroactive to the first day of the month following the month in which the last rate change taken into account in such revision became effective. Such rate changes shall not be subject to the 60 day notice requirement of § 965.502(c).

**§ 965.508 Individual relief.**

Requests for relief from surcharges for excess consumption of PHA-purchased utilities, or from payment of utility supplier billings in excess of the allowances for resident-purchased utilities, may be granted by the PHA on reasonable grounds, such as special needs of elderly, ill or disabled residents, or special factors affecting utility usage not within the control of the resident, as the PHA shall deem appropriate. The PHA's criteria for granting such relief, and procedures for requesting such relief, shall be adopted at the time the PHA adopts the methods and procedures for determining utility allowances. Notice of the availability of such procedures (including identification of the PHA representative with whom initial contact may be made by residents), and the PHA's criteria for granting such relief, shall be included in each notice to residents given in accordance with § 965.502(c) and in the information given to new residents upon admission.

Dated: February 22, 1996.

MaryAnn Russ,

*Acting Assistant Secretary for Public and Indian Housing.*

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Thursday
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## Part X

# The President

**Order of February 27, 1996—Further Designation Under Executive Order No. 12958**

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# Presidential Documents

Title 3—

The President

Order of February 27, 1996

## Further Designation Under Executive Order No. 12958

Pursuant to the provisions of section 1.4 of Executive Order No. 12958 of April 17, 1995, entitled ''Classified National Security Information,'' I hereby designate the following additional officials to classify information originally as ''Top Secret'':

The Chair, Commission on the Roles and Capabilities of the United States Intelligence Community

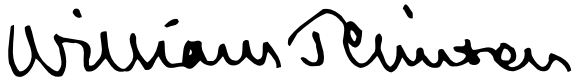
The Director, National Counterintelligence Center

The Chair of the Commission on the Roles and Capabilities of the United States Intelligence Community, shall exercise the authority to classify information originally as ''Top Secret'' during the existence of the Commission and for such time afterwards as may be necessary to complete the Commission's administrative affairs.

The authority of the Director of the National Counterintelligence Center to classify information originally as ''Top Secret'' is limited to those circumstances in which the original classification of information is necessary in order for the Center to fulfill its mission and functions.

Any delegation of this authority shall be in accordance with section 1.4(c) of Executive Order No. 12958.

This order shall be published in the Federal Register.



THE WHITE HOUSE,
*February 27, 1996.*

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The rules and proposed rules in this list were editorially compiled as an aid to Federal Register users. Inclusion or exclusion from this list has no legal significance.

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